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Title 3—

The President

Executive Order 13565 of February 8, 2011

Establishment of the Intellectual Property Enforcement Advisory Committees

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title III of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (Public Law 110–403)(15 U.S.C. 8111–8116) (the "PRO IP Act"), and in order to strengthen the efforts of the Federal Government to encourage innovation through the effective and efficient enforcement of laws protecting copyrights, patents, trademarks, trade secrets, and other forms of intellectual property, both in the United States and abroad, including matters relating to combating infringement, and thereby support efforts to reinvigorate the Nation's global competitiveness, accelerate export growth, promote job creation, and reduce threats posed to national security and to public health and safety, it is hereby ordered as follows:

Section 1. *Senior Intellectual Property Enforcement Advisory Committee.*

(a) *Establishment of Committee.* There is established an interagency Senior Intellectual Property Enforcement Advisory Committee (Senior Advisory Committee), which shall be chaired by the Intellectual Property Enforcement Coordinator (Coordinator), Executive Office of the President.

(b) *Membership.* The Senior Advisory Committee shall be composed of the Coordinator, who shall chair it, and the heads of, or the deputies to the heads of:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Justice;

(iv) the Department of Agriculture;

(v) the Department of Commerce;

(vi) the Department of Health and Human Services;

(vii) the Department of Homeland Security;

(viii) the Office of Management and Budget; and

(ix) the Office of the United States Trade Representative.

A member of the Senior Advisory Committee may, in consultation with the Coordinator, designate a senior-level official from the member's department or agency who holds a position for which Senate confirmation is required to perform the Senior Advisory Committee functions of the member.

(c) *Mission and Functions.* Consistent with the authorities assigned to the Coordinator, and other applicable law, the Senior Advisory Committee shall advise the Coordinator and facilitate the formation and implementation of each Joint Strategic Plan required every 3 years under title III of the PRO IP Act (15 U.S.C. 8113), consistent with this order.

(d) *Administration.* The Coordinator shall coordinate and support the work of the Senior Advisory Committee in fulfilling its functions under this order. The Coordinator shall convene the first meeting of the Senior Advisory Committee within 90 days of the date of this order and shall thereafter convene such meetings as appropriate.

Sec. 2. *Intellectual Property Enforcement Advisory Committee.*

(a) *Establishment of Committee.* There is established an interagency Intellectual Property Enforcement Advisory Committee (Enforcement Advisory Committee), which shall be chaired by the Coordinator. The Enforcement Advisory Committee shall serve as the committee established by section 301(b)(3) of the PRO IP Act (15 U.S.C. 8111(b)(3)).

(b) *Membership.* The Enforcement Advisory Committee shall be composed of the Coordinator, who shall chair it, and representatives from the following departments and agencies, or units of departments and agencies, who hold a position for which Senate confirmation is required, who are involved in intellectual property enforcement, and who are, or are designated by, the respective heads of those departments and agencies:

(i) the Office of Management and Budget;

(ii) relevant units within the Department of Justice, including the Criminal Division, the Civil Division, and the Federal Bureau of Investigation;

(iii) the United States Patent and Trademark Office, the International Trade Administration, and other relevant units of the Department of Commerce;

(iv) the Office of the United States Trade Representative;

(v) the Department of State, the Bureau of Economic, Energy, and Business Affairs, the United States Agency for International Development and the Bureau of International Narcotics and Law Enforcement Affairs;

(vi) the Department of Homeland Security, United States Customs and Border Protection, and United States Immigration and Customs Enforcement;

(vii) the Food and Drug Administration of the Department of Health and Human Services;

(viii) the Department of Agriculture;

(ix) the Department of the Treasury; and

(x) such other executive branch departments, agencies, or offices as the President determines to be substantially involved in the efforts of the Federal Government to combat counterfeiting and infringement.

Pursuant to the PRO IP Act (15 U.S.C. 8111), the Coordinator shall also invite the Register of Copyrights, or a senior representative of the United States Copyright Office designated by the Register of Copyrights, to serve as a member of the Enforcement Advisory Committee.

(c) *Mission and Functions.*

(i) Consistent with the authorities assigned to the Coordinator and the Enforcement Advisory Committee, and other applicable law, the Enforcement Advisory Committee shall develop each Joint Strategic Plan as provided for in title III of the PRO IP Act. In the development and implementation of the Joint Strategic Plan, the heads of the departments and agencies identified in section 2(b) of this order shall share with the Coordinator and the other members of the Enforcement Advisory Committee relevant department or agency information, to the extent permitted by law, including requirements relating to confidentiality and privacy, and to the extent that such sharing of information is consistent with law enforcement protocols for handling such information. Such information shall include:

(A) plans for addressing the Joint Strategic Plan;

(B) statistical information on the enforcement activities taken by that department or agency against counterfeiting or infringement; and

(C) recommendations to enhance cooperation among Federal, State, and local authorities responsible for intellectual property enforcement.

(ii) The Coordinator may establish subgroups, consisting exclusively of Enforcement Advisory Committee members or their designees, who must be officials from the designating member's department or agency, to support the functions of the Enforcement Advisory Committee. The subgroups

shall be chaired by the Coordinator, or the Coordinator's designee with expertise and experience in intellectual property enforcement matters, and may include:

(A) an Enforcement Subcommittee; and

(B) other subcommittees as the Coordinator deems appropriate, including subcommittees addressing particular enforcement issues, efforts, training, and information sharing among departments and agencies.

(d) *Administration.* The Coordinator shall coordinate and support the work of the Enforcement Advisory Committee in fulfilling its functions under this order and under section 301(b)(3)(B) of the PRO IP Act (15 U.S.C. 8111(b)(3)(B)). The Coordinator shall convene meetings of the Enforcement Advisory Committee as appropriate.

Sec. 3. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect the:

(i) authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations. Consistent with section 301(b)(2) of the PRO IP Act (15 U.S.C. 8111(b)(2)), the Coordinator may not control or direct any Federal law enforcement agency in the exercise of its investigative or prosecutorial authority.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
February 8, 2011.

[FR Doc. 2011–3257
Filed 2–10–11; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

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

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DEPARTMENT OF ENERGY

10 CFR Part 1023

48 CFR Parts 901, 902, 903, 904, 906, 907, 908, 909, 911, 914, 915, 916, 917, and 952

RIN 1991–AB81

(General Provisions) Contract Appeals and the Acquisition Regulation: General, Acquisition Planning, and Contracting Methods and Contract Types

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) regulations on Acquisition Planning, and Contracting Methods and Contract Types to make changes to conform to the Federal Acquisition Regulation (FAR), remove out-of-date coverage, and update references. Today's rule does not alter substantive rights or obligations under current law.

DATES: *Effective Date:* March 14, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara Binney at (202) 287–1340 or by e-mail, *barbara.binney@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
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F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13211
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
L. Approval by the Office of the Secretary of Energy

I. Background

This final rule amends the Department of Energy Acquisition Regulation (DEAR) and the DOE regulation at 10 CFR part 1023 which implements DOE's contract appeals procedures. DEAR subchapters A, B, and C have outdated sections that need to be updated for consistency with the Civilian Board of Contract Appeals (CBCA) provisions of Section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, and provisions of the FAR and the Title 41, chapter 102—Federal Management Regulation. DOE is implementing these provisions but they are not yet reflected in the DEAR.

DOE is also removing regulations in 10 CFR part 1023 that have been made obsolete by the establishment of the CBCA within the General Services Administration. DOE has already adjusted its internal procedures to address the CBCA jurisdiction.

With the amended changes to Subchapters A, B, and C, the DEAR would conform to the FAR, the Title 41, chapter 101—Federal Property Management Regulation, and the Federal Management Regulation. The purpose of this rule is to update the existing DEAR to conform it to the FAR. Changes are to DEAR parts 901, 902, 903, 904, 906, 907, 908, 909, 911, 914, 915, 916, 917, and 952. No changes are being made to DEAR parts 905, 910, and 912 at this time. None of today's conforming changes are substantive or of a nature to cause any significant expense for DOE or its contractors.

II. Discussion

DOE published a notice of proposed rulemaking on July 1, 2010 (75 FR 38042), with a public comment period ending on August 2, 2010. DOE received no comments.

DOE amends the 10 CFR part 1023 as follows:

1. DOE removes from the regulation 10 CFR part 1023 made obsolete by the termination of the Energy Board of Contract Appeals and the establishment of the Civilian Board of Contract Appeals. Section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163 established within the General Services Administration the Civilian Board of Contract Appeals and terminates authority for the Energy Board of Contract Appeals.

DOE amends the DEAR as follows:

2. Section 901.101 is revised to add "(Chapter 1 of Title 48 of the Code of Federal Regulations (CFR))" to provide the citation to the FAR's CFR chapter.

3. Section 901.102 is removed and redesignated as 901.103 to conform to the FAR. It also is revised to add "Senior" before "Procurement Executive" and to clarify that there are two Senior Procurement Executives, one for the National Nuclear Security Administration (NNSA) and the other for the rest of the Department of Energy (DOE). The section is further revised to add a reference to the more recent and separate delegation for the NNSA Senior Procurement Executive from the Administrator of the NNSA, and update citation references to the United States Code.

4. Section 901.103 is redesignated as 901.104. That section is also revised to clarify that the DEAR applies to NNSA acquisitions.

5. Section 901.104–1 is redesignated as 901.105–1. That section is revised to add the CFR citation and the Web site reference for the electronic CFR.

6. Section 901.104–2 is redesignated as 901.105–2. In addition, it is moved to update the cite in paragraph (b) from 1.104–2(b) to 1.105–2(b) to conform to the FAR.

7. Section 901.104–3 is redesignated as 901.105–3 which is revised to add the Web site reference to view the electronic DEAR.

8. Section 901.105 is redesignated as 901.106. The title of the redesignated 901.106 is revised to read "OMB approval under the Paperwork Reduction Act" to conform to the FAR. In addition, the Office of Management and Budget (OMB) acronym is spelled out. The paragraph is further revised to remove the redundant FAR text and the reference to canceled OMB control number 1910–5103.

9. Section 901.301–70 paragraph (a) is revised to add a reference to the Federal Management Regulation to conform to the FMR. The paragraph is also revised to state that the Department of Energy

Acquisition Guide provides procedural guidance for the acquisition community and provides the Web link to the guide.

10. Subpart 901.6 is revised to add "Career Development," to the title of this subpart.

11. Section 901.601 paragraph (a) is revised to add the contracting authority for NNSA. This paragraph explains the authorities for the Senior Procurement Executives for DOE and NNSA. Paragraph (b) is revised to clarify that both of the Senior Procurement Executives have been authorized to perform functions set forth at FAR 1.601(b).

12. Section 901.602–3 is revised to clarify that the Senior Procurement Executives are authorized to ratify unauthorized commitments.

13. Section 901.603 is revised by adding references to DOE Order 361.1B, Acquisition Career Management Program and DOE Order 541.1B, Appointment of Contracting Officers and Contracting Officer Representatives, or their respective successor orders.

14. Part 902 is revised by adding subpart 902.1 consisting of 902.101, Definitions, to define the "Agency Head or Head of the Agency", the "Department of Energy", and the "Senior Procurement Executive" and by removing 902.200 in its entirety and adding the clause instruction at 902.201 to conform to the FAR.

15. Section 903.303 is amended in paragraph (a) to add "Senior" before "Procurement Executive".

16. Subpart 903.4 Contingent Fees is amended at 903.405 to revise the section heading.

17. Section 903.405 is revised to delete the reference to use Standard Form 119, which is outdated, but retains the direction that the chief of the contracting office seek review by counsel before initiating appropriate action.

18. Section 903.603 in paragraph (a) removes the first occurrence of "FAR".

19. Subpart 903.7—Voiding and Rescinding Contracts is added to state only the Head of the Contracting Activity can determine whether a contract is voided or rescinded.

20. Subpart 903.10—Contractor Code of Business Ethics and Conduct is added to conform with the FAR.

21. Section 903.1004 Contract clauses, paragraph (b)(2)(ii) is added to instruct the contracting officer to insert the DOE Web site address *http://ig.energy.gov/hotline.htm* in paragraph (b)(3) of the 48 CFR 52.203–14 clause, Display of Hotline Poster(s).

22. Section 904.7001 is amended by removing the last sentence which contained the definitions of "contractor," "contract," and "special nuclear material."

23. Section 904.7002 is amended by adding three definitions of terms that were previously described in the last sentence of section 904.7001.

24. Section 906.102 paragraph (d)(4) is rewritten to clarify the use of competitive selection procedures for the award of research proposals in accordance with Subpart 917.73 and FAR Part 35.

25. Section 906.102 paragraph (d)(5) is rewritten to clarify the use of competitive selection procedures for award of program opportunity notices for commercial demonstrations in accordance with Subpart 917.72.

26. Section 906.501 is revised to add the NNSA role in delegating authority for appointment of the agency and contracting activity competition advocates, and removing the last sentence referencing procedural guidance in internal directives.

27. Part 907 is removed and reserved, pursuant to Federal Acquisition Circular 2005–09 which revised FAR Subpart 7.3 to be consistent with OMB Circular A–76 (Revised), Performance of Commercial Activities, dated May 29, 2003.

28. Section 908.7107 on the procurement of industrial alcohol is amended by revising this section to reflect current Alcohol and Tobacco Tax and Trade Bureau, Department of Treasury regulations.

29. Sections 909.400(a), 909.400(b), and 909.401 are amended by adding "National Nuclear Security Administration (NNSA)" after "DOE".

30. Section 909.401 is amended by removing "10 CFR part 1036." and adding in its place "2 CFR part 901." to update the citation.

31. Part 909 is amended by adding to section 909.405 Effect of listing, by identifying the debarment exception authority for NNSA in paragraph (e) and by adding references to NNSA and the Excluded Parties List System (EPLS) in paragraphs (f) through (h), which supplement FAR 9.405.

32. Section 909.406–2 is amended in paragraph (c) by adding "DOE and NNSA" and revising punctuation in paragraphs (c)(1) and (d)(1).

33. Section 909.406–3(a)(1) is amended in the first sentence, by removing "both the Deputy Assistant Secretary for Procurement and Assistance Management" and adding in its place "the appropriate Senior Procurement Executive" to correct the title of the official and by removing "1010.217(b), Cooperation with the Inspector General." and adding in its place "1010.103, Reporting Wrongdoing."

34. Consistent with FAR 9.404, section 909.406–3(a)(2) is amended in paragraph (2) by revising punctuation; in subparagraph (iv) by adding "or other identifying number for an individual" as identifying information to be provided in a debarment referral; in subparagraphs (v) and (vii) adding "and NNSA's"; and in subparagraph (vi) removing "Board of Contract Appeals; and" and adding in its place "Civilian Board of Contract Appeals or other fact-finding body; and".

35. Section 909.406–3(b)(2) is amended in the third sentence by removing "refer the matter to the Energy Board of Contract Appeals" and adding in its place "appoint, and refer the matter to, a Fact-Finding Official".

36. Section 909.406–3(b)(3) is amended in the first sentence by removing "therefor".

37. Section 909.406–3(b)(4) is amended in the second through the fourth sentences by removing reference to the Energy Board of Contract Appeals and by adding in its place a reference to the Fact-Finding Official.

38. Section 909.406–3(d)(4) is amended in the third through fifth sentences by removing reference to the Energy Board of Contract Appeals and adding in its place a reference to the Fact-Finding Official.

39. Section 909.406–70(b) is amended in the third sentence, after "respondent" by removing the rest of the sentence.

40. Section 909.407 adds a new section heading.

41. Consistent with FAR 9.404, section 909.407–3 is amended in paragraph (e)(1)(vii) by removing mention of GSA and by adding EPLS to update the name of the listing.

42. Section 915.201 is amended by revising the section heading.

43. Section 915.305(d) is amended to remove "48 CFR (DEAR)" in the second sentence.

44. Sections 915.404–2 paragraph (a)(1) in two places; 915.404–2–70 paragraphs (a)(1) and (a)(2); 915.404–4–70–4 paragraph (a); and 915.404–4–70–7 paragraph (b) are amended by removing the dollar values and adding the reference to 48 CFR 15.403–4(a)(1).

45. Section 915.404–4(c)(4)(i) is amended by removing "profit and fees" and adding "price and fee".

46. Section 915.404–4–70–2 is amended by renumbering the table in paragraph (d) to conform to the DOE Form 42.20.23, Weighted Guidelines.

47. Section 915.404–4–72 is amended by removing "916.404–2" and adding "916.405–2" to update the reference to conform to FAR 16.405–2.

48. Section 916.203–4(d)(2) is amended by removing "(FAR)".

49. Section 916.307 is amended by adding a paragraph (a) which provides direction to the contracting officer to modify paragraph (a) of clause 48 CFR 52.216–7 by adding the phrase "as supplemented by subpart 931.2 of the DEAR" after "FAR subpart 31.2".

50. Section 917.602 is amended to remove "that" in the second sentence of paragraph (c) and adding in its place "than".

51. Section 917.7301–1 is amended by removing paragraphs (c) and (d). This information is internal guidance and has been moved to DOE's Acquisition Guide.

52. Section 917.7401 is amended by adding in the first paragraph before the first sentence, "The acquisition of real estate requires the involvement of a DOE Certified Realty Specialist, as specified at 917.7402." This amendment adds clarity to the processes of the DEAR and conforms to DOE Order 430.1B.

53. Section 917.7401(b) is amended by removing paragraph (b) in its entirety and adding in its place, "(b) Lease for which DOE will reimburse the contractor for the pre-approved costs incurred under the lease." This adds clarity to the DEAR and conforms to DOE Order 430.1B.

54. Section 917.7402 is amended in the first sentence by changing the punctuation; and in paragraph (b) adding "acquisition option considerations with the best" between the words "cost," and "acquisition method" and removing "and property appraisal reports; and" and adding in its place "property appraisal reports, and include the review and approval by the applicable DOE Certified Realty Specialist in accordance with DOE Order 430.1B, or its successor version; and". This adds clarity to the DEAR and conforms to the DOE Order 430.1B.

55. Section 917.7402(c)(2) and (4) is amended in paragraph (c)(2) by adding "approved by a DOE Certified Realty Specialist" and in paragraph (c)(4) by removing "and regulations applicable to real estate management." and adding in its place ", regulations, and the DOE Order 430.1B, or its successor version, applicable to real estate acquisition." This adds clarity to the DEAR and conforms to the DOE Order 430.1B.

56. Section 917.7402(d) is amended by adding that any real property actions require the involvement of the applicable DOE Certified Realty Specialist.

57. Section 917.7403 is amended in the title by removing "Application." and adding in its place "Contract clause."; by removing "48 CFR" before the clause number; by adding ", Acquisition of Real Property," after "952.217–70"; by removing "or" and adding in its place "including"; and by adding "of real property" after "contractor acquisitions".

58. Section 952.202–1 is amended to remove the included definitions and to direct contracting officers to supplement clause 48 CFR 52.202–1 by inserting paragraph (c). These changes are made to conform to revised part 902.

59. Clause 952.204–2 and provision 952.204–73 are amended to encourage contractors to submit information through the use of the online tool and to send a copy of standard form 328 to the contracting officer.

60. Clause 952.204–71 is amended in paragraph (b) by adding "which may involve making unclassified information about nuclear technology available to sensitive foreign nations" after "subcontracts". This phrase is added to provide clarity for subcontractor flow down pursuant to DEAR 904.404(d)(3).

61. Clause 952.217–70 is amended in subparagraph (a)(2) by removing this subparagraph in its entirety and adding in its place "(2) Lease for which the Department of Energy will reimburse the incurred costs of the lease as a reimbursable contract cost". This change is made to add clarity on reimbursements for leases.

62. Throughout, sections are amended by removing "FAR" and adding "48 CFR", by removing "DEAR" and adding "48 CFR", and by updating other CFR citations or changing punctuation.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice or rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule updates references in the DEAR that apply to public contracts and does not impose any additional requirements on small businesses. Today's rule does not alter any substantive rights or obligations and, consequently, today's rule will not have a significant cost or administrative impact on contractors, including small entities. On the basis of the foregoing, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens

associated with the collection of certain contractor data under the DEAR have been cleared under OMB control number 1910–4100.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, today's rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or Tribal governments, or to the private sector, of $100 million or more. This rule does not impose any Federal mandate on State, local or Tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rule will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to Office of Information and Regulatory Affairs of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

L. Approval by the Office of the Secretary of Energy

Issuance of today's rule has been approved by the Office of the Secretary.

List of Subjects

10 CFR Part 1023

Administrative practice and procedure, Claims, Equal access to justice, Government contracts, Government procurement, Lawyers.

48 CFR Parts 901, 902, 903, 904, 906, 907, 908, 909, 911, 914, 915, 916, 917, and 952

Government procurement.

Issued in Washington, DC, on January 13, 2011.

Patrick M. Ferraro,

Acting Director, Office of Procurement and Assistance Management, Department of Energy.

Joseph F. Waddell,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

For the reasons set out in the preamble, the Department of Energy amends Chapter X of Title 10 and Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

TITLE 10—ENERGY

PART 1023—[REMOVED]

■ 1. Under the authority of Section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, 10 CFR chapter X is amended by removing part 1023.

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Authority citations continue to read as follows:

■ a. For parts 901, 903, 904, 906, 908, 909, 914, 915, 916, and 917, the authority citation continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

■ b. For parts 911 and 952 the authority citations continue to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 901.1—Purpose, Authority, Issuance

901.101 [Amended]

■ 3. Section 901.101 is amended by adding "(Chapter 1 of Title 48 of the Code of Federal Regulations (CFR))" at the end of the sentence.

901.102, 901.103, 901.104, 901.104–1, 901.104–2, 901.104–3, and 901.105 [Redesignated as 901.103, 901.104, 901.105, 901.105–1, 901.105–2, 901.105–3, and 901.106]

■ 4. Redesignate sections 901.102, 901.103, 901.104, 901.104–1, 901.104–2, 901.104–3, and 901.105 as sections 901.103, 901.104, 901.105, 901.105–1, 901.105–2, 901.105–3, and 901.106, respectively.

■ 5. Newly redesignated section 901.103 is revised to read as follows:

901.103 Authority.

The DEAR and amendments thereto are issued by the Senior Procurement Executives of the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA). The DOE Senior Procurement Executive delegation is pursuant to a delegation from the Secretary of Energy in accordance with the authority of section 644 of the Department of Energy Organization Act (42 U.S.C. 7254), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 121(c)(2)), and other applicable laws. The NNSA Senior Procurement Executive delegation is pursuant to a delegation from the Administrator of the NNSA, in accordance with section 3212 of the National Nuclear Security Administration Act (50 U.S.C. 2402), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 121(c)(2)), and other applicable laws.

901.104 [Amended]

■ 6. Newly redesignated 901.104 is amended by adding "and NNSA" after the acronym "DOE."

■ 7. Revise newly redesignated 901.105–1 to read as follows:

901.105–1 Publication and code arrangement.

(a) The DEAR and its subsequent changes are published in the **Federal Register**, cumulative form in the Code of Federal Regulations (CFR), and Government Printing Office's Electronic CFR at *http://ecfr.gpoaccess.gov.*

(b) The DEAR is issued as Chapter 9 of Title 48 of the CFR.

901.105–2 [Amended]

■ 8. Amend newly redesignated 901.105–2(b) by removing "(FAR)" before "48" and removing "1.104–2(b)" and adding in its place "1.105–2(b)".

901.105–3 [Amended]

■ 9. Amend newly redesignated 901.105–3 by adding "or viewed on line at *http://ecfr.gpoaccess.gov* or at *http://management.energy.gov/DEAR.htm*" at the end of the sentence.

■ 10. Revise newly redesignated 901.106 to read as follows:

901.106 OMB approval under the Paperwork Reduction Act.

The Office of Management and Budget (OMB) control number for the collection of information under 48 CFR chapter 9 is 1910–4100.

Subpart 901.3—Agency Acquisition Regulations

■ 11. Section 901.301–70 is revised to read as follows:

901.301.70 Other issuances related to acquisition.

(a) In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulation, the Federal Management Regulation, the DOE Property Management Regulation, and DOE Directives. The Department also maintains the DOE Acquisition Guide ("the Guide"), which has procedural guidance for the acquisition community. The DOE Acquisition Guide serves this purpose by identifying relevant internal standard operating procedures to be followed by both procurement and program personnel who are involved in various aspects of the acquisition process. The Guide also is intended to be a repository of best practices found throughout the agency that reflect specific illustrations of techniques which might be helpful to all readers. The Guide is at *http://management.energy.gov/policy_guidance/Acquisition_Guide.htm.*

Subpart 901.6—Career Development, Contracting Authority, and Responsibilities

■ 12. The heading of subpart 901.6 is revised to read as set forth above.

■ 13. Section 901.601 is revised to read as follows:

901.601 General.

(a) Contracting authority for DOE vests in the Secretary of Energy, and for NNSA in the Administrator.

(1) The Secretary has delegated this authority to the DOE Senior Procurement Executive. The DOE Senior Procurement Executive has redelegated this authority to the DOE Heads of Contracting Activities (HCA). These delegations are formal written delegations containing specific dollar limitations and conditions. Each DOE HCA, in turn, makes formal contracting officer appointments for its contracting activity.

(2) Contracting authority for NNSA vests in the Under Secretary for Nuclear Security, also known as the NNSA Administrator. The NNSA Administrator has delegated this authority, with specific dollar limitations and conditions to the NNSA Senior Procurement Executive. The NNSA Senior Procurement Executive has redelegated this authority to the NNSA Head of the Contracting Activities (HCA). Each NNSA HCA in turn makes formal contracting officer appointments for its contracting activity.

(b) The Senior Procurement Executives have been authorized, without power of redelegation, to perform the functions set forth at 48 CFR 1.601(b) regarding the assignment of contracting functions and responsibilities to another agency, and the creation of joint or combined offices with another agency to exercise acquisition functions and responsibilities.

■ 14. Section 901.602–3 is amended by revising paragraph (b)(2), and removing from paragraph (b)(3), the term "Procurement Executive" and adding in its place "DOE and NNSA Senior Procurement Executives".

The revision reads as follows:

901.602–3 Ratification of unauthorized commitments.

(b)(2) The Senior Procurement Executives are authorized to ratify unauthorized commitments.

* * * * *

■ 15. Sections 901.603, 901.603–1, and 901.603–70 are added to subpart 901.6 to read as follows:

901.603 Selection, appointment, and termination of appointment.

901.603–1 General.

The DOE Order 361.1B, Acquisition Career Management Program, or its

successor order, sets forth the requirements and responsibilities for the DOE and NNSA Acquisition Career Development Program.

901.603–70 Appointment of contracting officers and contracting officer's representatives.

See the DOE Order 541.1B, Appointment of Contracting Officers and Contracting Officer Representatives, or its successor order, for procedures on the appointment of contracting officers and contracting officer's representatives.

■ 16. Part 902 is revised to read as follows:

PART 902—DEFINITIONS OF WORDS AND TERMS

Sec.

Subpart 902.1—Definitions

902.101 Definitions.

Subpart 902.2—Definitions Clause

902.201 Contract clause.

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

Subpart 902.1—Definitions

902.101 Definitions.

Agency Head or *Head of the Agency* means—

(1) For the Department of Energy (DOE)—

(i) The Secretary;

(ii) The Deputy Secretary; or

(iii) Under Secretaries of the Department of Energy.

(2) For the National Nuclear Security Administration (NNSA) the Administrator, also known as the Under Secretary of Nuclear Security.

Department of Energy (DOE) means, as used in the DEAR, the Department of Energy and includes the National Nuclear Security Administration (NNSA), unless otherwise specified.

Senior Procurement Executive means for the Department of Energy, the Director, Office of Procurement and Assistance Management and for the National Nuclear Security Administration, the Director, Office of Acquisition and Supply Management.

Subpart 902.2—Definitions Clause

902.201 Contract clause.

Insert the clause at 952.202–1, Definitions, in solicitation and contracts that exceed the simplified acquisition threshold.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

903.303 [Amended]

■ 17. Section 903.303 is amended by:

■ a. Adding "Senior" before "Procurement Executive" in the first sentence of paragraph (a); and

■ b. Removing "FAR" from the first sentence, both occurrences, and adding in its place "48 CFR".

■ 18. Section 903.405 is revised to read as follows:

903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Before the Chief of the Contracting Office initiates appropriate action, the action shall be reviewed by Legal Counsel.

903.603 [Amended]

■ 19. Section 903.603 is amended by:

■ a. Removing the first occurrence of "FAR" in paragraph (a); and

■ b. Removing "FAR" at its second occurrence in the first sentence and adding in its place "48 CFR".

■ 20. Add a new subpart 903.7 consisting of 903.700 to read as follows:

Subpart 903.7—Voiding and Rescinding Contracts

903.700 Scope of subpart.

The HCA is the designee for determining whether to void or rescind a contract. This authority is nondelegable.

■ 21. Add a new subpart 903.10 consisting of 903.1004 to read as follows:

Subpart 903.10—Contractor Code of Business Ethics and Conduct

903.1004 Contract clauses.

(b)(2)(ii) Insert the DOE Web site address *http://ig.energy.gov/hotline.htm* in paragraph (b)(3) of the 48 CFR 52.203–14 clause, Display of Hotline Poster(s).

PART 904—ADMINISTRATIVE MATTERS

904.404 [Amended]

■ 22. Section 904.404 is amended by removing "FAR" in paragraph (d)(1) in the last sentence and adding in its place "48 CFR".

904.804 [Amended]

■ 23. Section 904.804–1 is amended by removing "FAR" in paragraph (a) and adding in its place "48 CFR".

904.7001 [Amended]

■ 24. Section 904.7001 is amended by removing "as defined in 10 CFR part 710" from the first sentence and removing the last sentence in its entirety.

■ 25. Section 904.7002 is amended by adding in alphabetical order new definitions for "contract", "contractor", and "special nuclear material" to read as follows:

904.7002 Definitions.

Contract means the prime contract and the subcontract at any tier.

* * * * *

Contractor means the contractor and the subcontractor at any tier.

* * * * *

Special nuclear material means special nuclear material as defined in 10 CFR 710.5(a).

PART 906—COMPETITION REQUIREMENTS

■ 26. Section 906.102 is amended in paragraph (d)(1) by removing "FAR Subpart" and adding in its place "48 CFR subpart", and revising paragraphs (d)(4) and (d)(5) to read as follows:

906.102 Use of competitive procedures.

(d) * * *

(4) Program research and development announcements shall follow the competitive selection procedures for the award of research proposals in accordance with subpart 917.73 and 48 CFR part 35.

(5) Program opportunity notices for commercial demonstrations shall follow the competitive selection procedures for award of these proposals in accordance with subpart 917.72.

906.202 [Amended]

■ 27. Section 906.202 is amended by removing "FAR" in paragraph (b)(1) and adding in its place "48 CFR".

906.304 [Amended]

■ 28. Section 906.304 is amended by removing "FAR" in paragraph (c)(2) and adding in its place "48 CFR".

■ 29. Section 906.501 is revised to read as follows:

906.501 Requirement.

The Secretary of Energy and NNSA Administrator have delegated the authority for appointment of the agency and contracting activity competition advocates to the respective DOE and NNSA Senior Procurement Executives. The Senior Procurement Executives have redelegated authority to the Head of the Contracting Activity to appoint contracting activity competition advocates.

PART 907—[REMOVED AND RESERVED]

■ 30. Under the authority of 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.,* Part 907 is removed and reserved.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

908.7106 [Amended]

■ 31. Section 908.7106 is amended by removing "FAR" in paragraph (b) and adding in its place "48 CFR part".

■ 32. Section 908.7107 is revised to read as follows:

908.7107 Procurement and use of industrial alcohol.

(a) This section covers the procurement of industrial alcohol by DOE or authorized contractors and the applicable policies and delegations of authority to submit industrial alcohol user application to procure and use tax-free alcohol or specially denatured spirits. To the fullest extent practicable, industrial alcohol for use by DOE or its contractors shall be procured on a tax-free basis.

(b) The procurement of tax-free alcohol or specially denatured spirits shall be conducted in accordance with the regulations, policy, and procedures of the Alcohol and Tobacco Tax and Trade Bureau (TTB), of the Department of Treasury. The applicable TTB regulations and forms may be accessed at the following Web site: *http://www.ttb.gov/foia/err.shtml#regulations.* For further information, contact the Alcohol and Tobacco Tax and Trade Bureau, Director, National Revenue Center, 550 Main St., Suite 8002, Cincinnati, OH 45202–5215 or toll free at 1–877–882–3277.

(c) The applying office should coordinate, as necessary, with the local State Alcohol Control Board, or its equivalent, to obtain the appropriate State license.

(1) *Tax-free alcohol.* TTB regulations relating to the procurement and use of alcohol free of tax, by Government agencies, are set forth in 27 CFR Part 22, subpart N, §§ 22.171 to 22.176.

(2) *Specially denatured spirits.* TTB regulations relating to the acquisition and use of alcohol free of tax, by Government agencies, are set forth in 27 CFR Part 20, subpart N, §§ 20.241 to 20.245.

(d) For the user permits to procure and use tax-free alcohol and specially denatured spirits submit the application on the TTB Form 5150.22, "Application for Industrial Alcohol User Permit," (or the current TTB form). When permits are no longer required, they should be forwarded to the Alcohol and Tobacco Tax and Trade Bureau for cancellation. Industrial alcohol procured by use of the TTB form referred to in this subsection shall be used exclusively on DOE work.

(e) The Senior Procurement Executive (SPE) has the authority to sign the TTB application, Form 5150.22. The SPE may delegate this authority to sign the application to specifically named DOE personnel. Requests for new authorizations or changes to existing authorizations shall be submitted by letter to the SPE. A copy of the TTB approved permit shall be sent to the SPE.

(f) Abandoned and forfeited alcohol which has come into the custody or control of a Federal agency may be obtained by following the procedure set forth in the FMR at 41 CFR part 102–41.

PART 909—CONTRACTOR QUALIFICATIONS

909.400 [Amended]

■ 33. Section 909.400 is amended:
■ a. In paragraph (a), by adding "and National Nuclear Security Administration (NNSA)"; after "(DOE)";
■ b. In paragraph (a), by adding "and, NNSA", after "DOE"; and
■ c. In paragraph (b), by adding "and NNSA" after "DOE".

909.401 [Amended]

■ 34. Section 909.401 is amended by:
■ a. Adding "and NNSA"; after "DOE"; and
■ b. Removing "10 CFR part 1036." and adding in its place "2 CFR part 901."

■ 35. Section 909.405 is revised to read as follows:

909.405 Effect of listing.

(e) The Department of Energy may not solicit offers from, award contracts to or consent to subcontracts with contractors debarred, suspended, or proposed for debarment unless the Senior Procurement Executive makes a written determination justifying that there is a compelling reason for such action in accordance with 48 CFR 9.405(a). For NNSA, the Head of the Contracting Activity (HCA) makes the written determination justifying the compelling reason.

(f) DOE or NNSA may disapprove or not consent to the selection (by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is listed in the Excluded Parties List System (EPLS).

(g) DOE or NNSA shall not conduct business with an agent or representative of a contractor if the agent's or representative's name is listed in the EPLS.

(h) DOE or NNSA shall review the EPLS before conducting a pre-award survey or soliciting proposals, awarding contracts, renewing or otherwise extending the duration of existing contracts, or approving or consenting to the award, extension, or renewal of subcontracts.

909.406–2 [Amended]

■ 36. Section 909.406–2 is amended by adding "DOE and NNSA" in paragraph (c) introductory text, first sentence, after "The".

■ 37. Section 909.406–3 is amended by:
■ a. Removing from the first sentence in paragraph (a)(1), "both the Deputy Assistant Secretary for Procurement and Assistance Management" and adding in its place "the appropriate Senior Procurement Executive"; and removing, "§ 1010.217(b), Cooperation with the Inspector General." and adding in its place "§ 1010.103, Reporting Wrongdoing.";
■ b. Removing the colon at the end of the introductory text of paragraph (a)(2) and adding in its place "—";
■ c. Adding "or other identifying number for an individual" in paragraph (a)(2)(iv) after "Number";
■ d. Adding "and NNSA's" in paragraph (a)(2)(v) after "DOE's";
■ e. Removing "Board of Contract Appeals; and" in paragraph (a) (2)(vi) and adding in its place "Civilian Board of Contract Appeals or other fact-finding body; and;";
■ f. Adding "and NNSA" in paragraph (a)(2) (vii) after "DOE";
■ g. Removing "refer the matter to the Energy Board of Contract Appeals" in paragraph (b)(2) third sentence and adding in its place "appoint, and refer the matter to, a Fact-Finding Official";
■ h. Removing "therefor" in paragraph (b)(3) first sentence; and
■ i. Revising paragraphs (b)(4) and (d)(4) to read as follows:

909.406–3 Procedures.

* * * * *

(b) * * *

(4) *Fact-finding conference.* The purpose of a fact-finding conference under this section is to provide the respondent an opportunity to dispute material facts through the submission of oral and written evidence; resolve facts in dispute; and provide the Debarring Official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. The fact-finding conference shall be conducted in accordance with rules consistent with 48 CFR 9.406–3(b). The Fact-Finding Official will notify the affected parties of the schedule for the hearing. The Fact-Finding Official shall deliver written findings of fact to the Debarring Official (together with a

transcription of the proceeding, if made) within a certain time period after the hearing record closes as specified by the Fact-Finding Official. The findings shall resolve any disputes over material facts based upon a preponderance of the evidence, if the case involves a proposal to debar, or on adequate evidence, if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that would warrant a fact-finding conference for those proposed debarments based on convictions or civil judgments.

(d) *Debarring Official's decision.* (4) The Debarring Official's final decision shall be based on the administrative record. In those actions where additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared and included in the final decision. In those cases where the contractor has requested and received a fact-finding conference, the written findings of fact shall be those findings prepared by the Fact-Finding Official. Findings of fact shall be final and conclusive unless, within 15 days of receipt of the findings, the Department or the respondent requests reconsideration, or unless set aside by a court of competent jurisdiction. The Fact-Finding Official shall be provided a copy of the Debarring Official's final decision.

909.406–70 [Amended]

■ 38. Section 909.406–70 is amended by removing the words "and, if a fact-finding conference under 909.406–3(b)(4) is pending (as in the case of a request for reconsideration of a suspension, where the proposed debarment is the subject of a fact-finding conference), a copy of the disposition shall be transmitted to the Energy Board of Contract Appeals" in paragraph (b), third sentence.

909.407–3 [Amended]

■ 39. Section 909.407–3 is amended by revising paragraph (e)(1)(vii) to read as follows:

909.407–3 Procedures.

* * * * *

(e) * * *

(1) * * *

(vii) A statement that the respondent's name and address will be added to the EPLS; and

* * * * *

909.400, 909.403, 909.406, 909.407 [Amended]

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

Section	Remove	Add
909.400(c)	"FAR"	"48 CFR"
909.403	"FAR"	"48 CFR"
909.406–2(d)(1)	"FAR"	"48 CFR"
909.406–70(a)	"FAR"	"48 CFR"
909.407–3(b)(2)	"FAR"	"48 CFR"
909.407–3(e)(1)(v)	"FAR"	"48 CFR"

PART 911—DESCRIBING AGENCY NEEDS

911.600 [Amended]

■ 41. Section 911.600 is amended by removing "FAR" and adding in its place "48 CFR part".

PART 914—SEALED BIDDING

914.404, 914.407, 914.502 [Amended]

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

Section	Remove	Add
914.404–1	"FAR"	"48 CFR"
914.407–3(e) in 3 places.	"FAR"	"48 CFR"
914.407–4 in 2 places.	"FAR"	"48 CFR"
914.502(c)	"FAR"	"48 CFR"

PART 915—CONTRACTING BY NEGOTIATION

■ 43. Section 915.201 is amended by revising the section heading to read as follows:

915.201 Exchanges with industry before receipt of proposals.

* * * * *

915.305 [Amended]

■ 44. Section 915.305(d) is amended by removing "48 CFR (DEAR)" in the second sentence.

915.404–2 [Amended]

■ 45. Section 915.404–2 is amended by removing "$500,000" in paragraph (a)(1), in two places, and adding in its place "the threshold stated at 48 CFR 15.403–4(a)(1)."

915.404–2–70 [Amended]

■ 46. Section 915.404–2–70 is amended by:

(a) Removing "$500,000" in paragraph (a)(1), and adding in its place "The threshold stated at 48 CFR 15.403–4(a)(1)"; and

(b) Removing "$1,000,000" in paragraph (a)(2), and adding in its place "Twice the threshold at 48 CFR 15.403–4(a)(1) for requiring cost or pricing data".

915.404–4 [Amended]

■ 47. Section 915.404–4(c)(4)(i) is amended in the first sentence by removing "profit and fees" and adding in its place "price and fee".

■ 48. Section 915.404–4–70–2 paragraph (d) is revised to read as follows:

915.404–4–70–2 Weighted guidelines system.

* * * * *

(d) The factors set forth in the following table are to be used in determining DOE profit objectives. The factors and weight ranges for each factor shall be used in all instances where the weighted guidelines are applied.

Profit factors	Weight ranges (percent)
I. Contractor Effort (Weights applied to cost):	
a. Material acquisitions:	
(1) Purchased parts	1 to 3.
(2) Subcontracted items	1 to 4.
(3) Other materials	1 to 3.
b. Labor skills:	
(1) Technical and managerial:	
(a) Scientific	10 to 20.
(b) Project management/administration.	8 to 20.
(c) Engineering	8 to 14.
(2) Manufacturing	4 to 8.
(3) Support services	4 to 14.
c. Overhead:	
(1) Technical and managerial	5 to 8.
(2) Manufacturing	3 to 6.
(3) Support services	3 to 7.
d. Other direct costs	3 to 8.
e. G&A (General Management) expenses.	5 to 7.
II. Contract Risk (type of contract-weights applied to total cost of items 4.a. thru 4.e.).	0 to 8.
III. Capital Investment (Weights applied to the net book value of allocable facilities).	5 to 20.
IV. Independent Research and Development:	
a. Investment in IR&D program (Weights applied to allocable IR&D costs).	5 to 7.
b. Developed items employed (Weights applied to total of profit $ for items 4.a. thru 4.e.).	0 to 20.
V. Special Program Participation (Weights applied to total of Profit $ for items 4.a. thru 4.e.).	−5 to +5.
VI. Other Considerations (Weights applied to total of Profits $ for items 4.a. thru 4.e.).	−5 to +5.

Profit factors	Weight ranges (percent)
VII. Productivity/Performance (special computation).	(N/A).

915.404–4–70–4 [Amended]

■ 49. Section 915.404–4–70–4 is amended by removing "$500,000" in paragraph (a), and adding in its place "the threshold stated at 48 CFR 15.403–4(a)(1)".

915.404–4–70–7 [Amended]

■ 50. Section 915.404–4–70–7 is amended by removing "$500,000" in paragraph (b), and adding in its place "the threshold stated at 48 CFR 15.403–4(a)(1)".

915.404–4–72 [Amended]

■ 51. Section 915.404–4–72 is amended by removing "916.404–2" in paragraph (a), and adding in its place "916.405–2".

915.207, 915.404 [Amended]

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

Section	Remove	Add
915.207–70(e)(2)	"FAR"	"48 CFR"
915.207–70(f)(2)(i)	"FAR"	"48 CFR"
915.207–70(f)(5)	"FAR"	"48 CFR"
915.404–2(a)(1) in the first sentence	"FAR"	"48 CFR"
915.404–4(c)(4)(i)	"FAR"	"48 CFR"
915.404–4(d)	"FAR"	"48 CFR"
915.404–4–70	"FAR"	"48 CFR"
915.404–4–70–2(a)	"FAR"	"48 CFR"
915.404–4–70–3, in the last sentence	"FAR"	"48 CFR"
915.404–4–71–1(a) in the introductory text	"DOE to"	"DOE to"

PART 916—TYPES OF CONTRACTS

916.203 [Amended]

■ 53. Section 916.203–4(d)(2) is amended by removing "(FAR)".

916.307 [Amended]

■ 54. Section 916.307 is amended by:
■ a. Adding a new paragraph (a) to read set forth below; and
■ b. By removing "FAR" in paragraph (g) and adding in its place "48 CFR".

916.307 Contract clauses.

(a) When contracting with a commercial organization, modify paragraph (a) of the clause at 48 CFR 52.216–7 by adding the phrase "as supplemented by subpart 931.2 of the DEAR" after "FAR subpart 31.2."

* * * * *

PART 917—SPECIAL CONTRACTING METHODS

917.602 [Amended]

■ 55. Section 917.602 is amended by removing "that" in the second sentence of paragraph (c) and adding in its place "than".

917.7200 [Amended]

■ 56. Section 917.7200 is amended by removing "non nuclear" in paragraph (a) and adding in its place "nonnuclear".

917.7301 [Amended]

■ 57. Section 917.7301–1 is amended by removing paragraphs (c) and (d).

■ 58. Section 917.7401 is amended by adding a new sentence at the beginning of the introductory text and by revising paragraph (b) to read as follows:

917.7401 General.

The acquisition of real estate requires the involvement of a DOE Certified Realty Specialist, as specified at 917.7402. * * *

* * * * *

(b) Lease for which DOE will reimburse the contractor for the pre-approved costs incurred under the lease.

* * * * *

■ 59. Section 917.7402 is amended by:
■ a. Removing the colon from the end of the introductory text and adding in its place "—";
■ b. Revising paragraphs (b), (c)(2) and (4); and
■ c. Adding a new paragraph (d).

The revisions and addition read as follows:

917.7402 Policy.

* * * * *

(b) Acquisitions shall be justified, with documentation which describes the need for the acquisitions, general requirements, cost, acquisition option considerations with the best acquisition method to be used, site investigation reports, site recommended for selection, property appraisal reports, and include the review and approval by the applicable DOE Certified Realty Specialist in accordance with DOE Order 430.1B, or its successor version; and

(c) * * *

(2) May exceed a one-year term, when the lease is for special purpose space funded by no-year appropriations and approved by a DOE Certified Realty Specialist. * * *

(4) Shall be consistent with Government laws, regulations, and the DOE Order 430.1B, or its successor version, applicable to real estate acquisition.

(d) Any real property actions require the involvement of the applicable DOE Certified Realty Specialist.

■ 60. Section 917.7403 is revised to read as follows:

917.7403 Contract clause.

The clause at 952.217–70, Acquisition of Real Property, shall be included in contracts including modifications where contractor acquisitions of real property are expected to be made.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 61. Section 952.202–1 is revised to read as follows:

952.202–1 Definitions.

As prescribed in 902.201, insert the clause at 48 CFR 52.202–1, Definitions, in all contracts. The following shall be added to the clause as paragraph (c):

(c) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

■ 62. Section 952.204–2 is amended by:
■ a. Revising the date of the clause; and

■ b. Adding in paragraph (j)(1) after the first sentence, two new sentences to read as follows:

952.204–2 Security.

* * * * *

SECURITY MAR 2011

* * * * *

(j) * * *

(1) * * * Contractors are encouraged to submit this information through the use of the online tool at *https://foci.td.anl.gov.* When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer. * * *

* * * * *

■ 63. Section 952.204–71 is amended by revising the clause date and paragraph (b) to read as follows:

952.204–71 Sensitive foreign nations controls.

* * * * *

SENSITIVE FOREIGN NATIONS CONTROLS MAR 2011

* * * * *

(b) The provisions of this clause shall be included in any subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.

* * * * *

■ 64. Section 952.204–73 is amended by:

■ a. Revising the date of the provision; and

■ b. Adding two new sentences at the end of paragraph (a)(1).

The revision and addition reads as follows:

952.204–73 Facility clearance.

* * * * *

FACILITY CLEARANCE MAR 2011

(a) * * *

(1) * * * Contractors are encouraged to submit this information through the use of the online tool at *https://foci.td.anl.gov.* When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

* * * * *

952.209–72 [Amended]

■ 65. Section 952.209–72 is amended by removing "48 CFR" in the introductory text.

952.217–70 [Amended]

■ 66. Section 952.217–70 is amended by revising the date of the clause and paragraph (a)(2) to read as follows:

952.217–70 Acquisition of real property.

* * * * *

ACQUISITION OF REAL PROPERTY MAR 2011

* * * * *

(a) * * *

(2) Lease for which the Department of Energy will reimburse the incurred costs as a reimbursable contract cost.

* * * * *

952.204, 952.215, 952.216 [Amended]

■ 67. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
952.204–2(e) in the first sentence	"the information:"	"the information—"
952.204–2(g) in the first sentence	"means:"	"means—"
952.204–2(h)(2)(i) in the first sentence	"A review must:"	"a review must—"
952.204–2(h)(2)(iii) in the first sentence	"including those: (a)"	"including those—(A)"
952.204–2(h)(2)(iv)	"10 CFR Part 707.4"	"10 CFR 707.4"
952.204–2(h)(2)(iv)	"10 CFR Part 707"	"10 CFR part 707"
952.204–2(h)(2)(vi) in the introductory text	"authorization:"	"authorization—"
952.204–2(l) in five places	"Subcontractor"	"subcontractor"
952.204–2(l) in the second sentence	"Subcontractors"	"subcontractors"
952.204–2(l) in the second sentence	"DEAR 952.204–73"	"48 CFR 952.204–73"
952.215–70(a) in the second sentence	"DEAR 970.5203–3"	"48 CFR 970.5203–3"
952.216–7	"FAR"	"48 CFR"
952.216–15 Alternate	"FAR"	"48 CFR"

[FR Doc. 2011–1320 Filed 2–10–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0054; Directorate Identifier 2010–CE–070–AD; Amendment 39–16582; AD 2011–01–53]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to the products listed above. The Piaggio service bulletin number specified in the Alternative Methods of Compliance (AMOCs) section is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective February 11, 2011. The effective date for AD 2011–01–53 remains January 24, 2011.

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

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, FAA, 901 Locust, Kansas City, MO 64106; phone: (816) 329–4144; fax: (816) 329–4090; e-mail: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2011–01–53, amendment 39–16582 (76 FR 4056, January 24, 2011), currently requires an immediate functional test of the fuselage drain holes, and requires sending a report of the results to the FAA. The AD also allows, with noted exceptions, for

the return/position of the airplane to a home base, hangar, maintenance facility, etc. for PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 airplanes.

As published, the Piaggio service bulletin number specified in the Alternative Methods of Compliance (AMOCs) section is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of AD 2011–01–53 remains January 24, 2011.

Correction of Regulatory Text

§ 39.13 [Corrected]

In the **Federal Register** of January 24, 2011, on page 4058, in the first column, paragraph (k)(2) of AD 2011–01–53, the Alternative Methods of Compliance (AMOCs) section is corrected to read as follows:

(2) Accomplishment of Piaggio Service Bulletin (ALERT) No. 80–0324, dated December 20, 2010, in its entirety provides an acceptable level of safety to the actions of this AD and thus is considered an approved AMOC for AD 2011–01–53.

Issued in Kansas City, Missouri, on February 7, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–3076 Filed 2–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 562

Iranian Human Rights Abuses Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is issuing regulations with respect to Iran to implement Executive Order 13553 of September 28, 2010. OFAC intends to supplement this part 562 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

DATES: *Effective Date:* February 11, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, *tel.:* 202/622–2490, Assistant Director for Licensing, *tel.:* 202/622–2480, Assistant Director for Policy, *tel.:* 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), *tel.:* 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On September 28, 2010, the President issued Executive Order 13553 (75 FR 60567, October 1, 2010) ("E.O. 13553"), invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), and in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995, with respect to Iran.

The Department of the Treasury's Office of Foreign Assets Control is issuing the Iranian Human Rights Abuses Sanctions Regulations, 31 CFR part 562 (the "Regulations"), to implement E.O. 13553 pursuant to authorities delegated to the Secretary of the Treasury in E.O. 13553. A copy of E.O. 13553 appears in appendix A to this part.

The Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part 562 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy. The appendix to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 562

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Services, Brokers, Foreign Trade, Investments, Loans, Securities, Iran.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 562 to 31 CFR Chapter V to read as follows:

PART 562—IRANIAN HUMAN RIGHTS ABUSES SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

562.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

562.201 Prohibited transactions.
562.202 Effect of transfers violating the provisions of this part.
562.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

Subpart C—General Definitions

562.301 Blocked account; blocked property.
562.302 Effective date.
562.303 Entity.
562.304 Interest.
562.305 Licenses; general and specific.
562.306 Person.
562.307 Property; property interest.
562.308 Transfer.
562.309 United States.
562.310 U.S. financial institution.
562.311 United States person; U.S. person.

Subpart D—Interpretations

562.401 [Reserved]
562.402 Effect of amendment.
562.403 Termination and acquisition of an interest in blocked property.
562.404 Transactions ordinarily incident to a licensed transaction authorized.
562.405 Setoffs prohibited.

562.406 Entities owned by a person whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

562.501 [Reserved]
562.502 [Reserved]
562.503 Exclusion from licenses.
562.504 Payments and transfers to blocked accounts in U.S. financial institutions.
562.505 Entries in certain accounts for normal service charges authorized.
562.506 Provision of certain legal services authorized.
562.507 Authorization of emergency medical services.

Subpart F—[Reserved]

Subpart G—[Reserved]

Subpart H—Procedures

562.801 [Reserved]
562.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

562.901 Paperwork Reduction Act notice.

Appendix A to Part 562—Executive Order 13553 of September 28, 2010

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, October 1, 2010.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 562.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Note to § 562.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance and additional general licenses and statements of licensing policy.

Subpart B—Prohibitions

§ 562.201 Prohibited transactions.

All transactions prohibited pursuant to Executive Order 13553 are also prohibited pursuant to this part.

Note 1 to § 562.201: The names of persons listed in or designated pursuant to Executive Order 13553, whose property and interests in property are blocked pursuant to this section, are published on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List ("SDN" list) (which is accessible via the Office of Foreign Assets Control's Web site), published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier "[IRAN–HR]". *See* § 562.406 concerning entities that may not be listed on the SDN list but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 562.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), in Section 203 (50 U.S.C. 1702), explicitly authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this part also are published on the SDN list, published in the **Federal Register**, and incorporated into Appendix A to this chapter with the identifier "[BPI–IRAN–HR]".

Note 3 to § 562.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

§ 562.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 562.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 562.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of IEEPA, Executive Order 13553, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third

party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 562.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of a person whose property and interests in property are blocked pursuant to § 562.201.

§ 562.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 562.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a Federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account described in paragraph (b) of this section may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 562.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account as described in paragraphs (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 562.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 562.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

Subpart C—General Definitions

§ 562.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 562.201 held in the name of a person whose property and interests in property are blocked pursuant to § 562.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

Note to § 562.301: *See* § 562.406 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 562.201.

§ 562.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to a person listed in the Annex to Executive Order 13553, 12:01 a.m. eastern daylight time, September 29, 2010; or

(b) With respect to a person whose property and interests in property are otherwise blocked pursuant to Executive Order 13553, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

§ 562.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 562.304 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* "an interest in property"), means an interest of any nature whatsoever, direct or indirect.

§ 562.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 562.305: *See* § 501.801 of this chapter on licensing procedures.

§ 562.306 Person.

The term *person* means an individual or entity.

§ 562.307 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or

interests therein, present, future, or contingent.

§ 562.308 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 562.309 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 562.310 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 562.311 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 562.401 [Reserved]

§ 562.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in this part, any provision in or appendix to this chapter, or any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 562.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 562.201, unless there exists in the property another interest that is blocked pursuant to § 562.201 or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 562.201, such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 562.404 Transactions ordinarily incident to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 562.201; or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 562.405 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 562.201 if effected after the effective date.

§ 562.406 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 562.201 has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 562.201, regardless of whether the entity itself is listed in the Annex or designated pursuant to Executive Order 13553.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 562.501 [Reserved]

§ 562.502 [Reserved]

§ 562.503 Exclusion from licenses.

The Office of Foreign Assets Control reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. The Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 562.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property

and interests in property are blocked pursuant to § 562.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note to § 562.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See* also § 562.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 562.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 562.506 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 562.201 is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any Federal or State agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to persons whose property and interests in property are blocked pursuant to § 562.201, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 562.201 is prohibited unless licensed pursuant to this part.

§ 562.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 562.201 is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—[Reserved]

Subpart G—[Reserved]

Subpart H—Procedures

§ 562.801 [Reserved]

§ 562.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13553 of September 28, 2010 (75 FR 60567, October 1, 2010), and any further Executive orders relating to the national emergency declared in Executive Order 12957, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 562.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, *see* § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Appendix A to Part 562—Executive Order 13553 of September 28, 2010

EXECUTIVE ORDER

BLOCKING PROPERTY OF CERTAIN PERSONS WITH RESPECT TO SERIOUS HUMAN RIGHTS ABUSES BY THE GOVERNMENT OF IRAN AND TAKING CERTAIN OTHER ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) (CISADA), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995,

I, BARACK OBAMA, President of the United States of America, hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State:

(A) to be an official of the Government of Iran or a person acting on behalf of the Government of Iran (including members of paramilitary organizations) who is responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Iran or Iranian citizens or residents, or the family members of the foregoing, on or after June 12, 2009, regardless of whether such abuses occurred in Iran;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in subsection (a)(ii)(A) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose

property and interests in property are blocked pursuant to this order.

(b) I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to subsection (a) of this section would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by subsection (a) of this section.

(c) The prohibitions in subsection (a) of this section include but are not limited to:

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

(d) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term "*person*" means an individual or entity;

(b) the term "*entity*" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "*United States person*" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term "*Government of Iran*" includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran; and

(e) the term "*family member*" means, with respect to an individual, a spouse, child, parent, sibling, grandchild, or grandparent of the individual.

Sec. 4. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and sections 105(a)–(c) of CISADA (22 U.S.C. 8514(a)–(c)), other than as described in sections 6 and 7 of this order, as may be necessary to carry out the purposes of this order other than the purposes of sections 6 and 7. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby further authorized to exercise the functions and waiver authorities conferred upon the President by section 401(b) of CISADA (22 U.S.C. 8551(b)) with respect to the requirement to impose or maintain sanctions pursuant to IEEPA under section 105(a) of CISADA (22 U.S.C. 8514(a)) and to redelegate these functions and waiver authorities consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. The Secretary of State is hereby authorized to exercise the functions and authorities conferred upon the President by section 105(a) of CISADA (22 U.S.C. 8514(a)) with respect to imposition of the visa sanctions described in section 105(c) of CISADA (22 U.S.C. 8514(c)) and to redelegate these functions and authorities consistent with applicable law. The Secretary of State is hereby further authorized to exercise the functions and authorities conferred upon the President by section 105(c) of CISADA (22 U.S.C. 8514(c)) with respect to the promulgation of rules and regulations related to the visa sanctions described therein and to redelegate these functions and authorities consistent with applicable law. The Secretary of State is hereby further authorized to exercise the functions and waiver authorities conferred upon the President by section 401(b) of CISADA (22 U.S.C. 8551(b)) with respect to the requirement to impose or maintain visa sanctions under section 105(a) of CISADA (22 U.S.C. 8514(a)) and to redelegate these functions and waiver authorities consistent with applicable law. In exercising the functions and authorities in the previous sentence, the Secretary of State shall consult the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security.

Sec. 7. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby authorized to submit the initial and updated lists of persons who are subject to visa sanctions and whose property and interests in property are blocked pursuant to this order to the appropriate congressional committees as required by section 105(b) of CISADA (22 U.S.C. 8514(b)) and to redelegate these functions consistent with applicable law. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby further authorized to exercise the functions and waiver authorities conferred upon the President by section 401(b) of CISADA (22 U.S.C. 8551(b)) with respect to the requirement to include a person on the list required by section 105(b) of CISADA (22 U.S.C. 8514(b)) and to redelegate these functions and waiver authorities consistent with applicable law.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out section 104 of CISADA (22 U.S.C. 8513). The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 10. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 11. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as response to those later actions.

Sec. 12. This order is effective at 12:01 a.m. eastern daylight time on September 29, 2010.

ANNEX

Individuals

1. Mohammad Ali JAFARI [Commander of the Islamic Revolutionary Guard Corps, born September 1, 1957]
2. Sadeq MAHSOULI [Minister of Welfare and Social Security, former Minister of the Interior and Deputy Commander-in-Chief of the Armed Forces for Law Enforcement, born 1959]
3. Qolam-Hossein MOHSENI-EJEI [Prosecutor-General of Iran, former Minister of Intelligence, born circa 1956]
4. Saeed MORTAZAVI [Head of Iranian Anti-Smuggling Task Force, former Prosecutor-General of Tehran, born 1967]
5. Heydar MOSLEHI [Minister of Intelligence, born 1956]
6. Mostafa Mohammad NAJJAR [Minister of the Interior and Deputy Commander-in-Chief of the Armed Forces for Law Enforcement, born 1956]
7. Ahmad-Reza RADAN [Deputy Chief of the National Police, born 1963 or 1964]
8. Hossein TAEB [Deputy Islamic Revolutionary Guard Corps Commander for Intelligence, former Commander of the Basij Forces, born 1963]

Dated: February 1, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

Approved: February 4, 2011.

Stuart A. Levey,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. 2011–3040 Filed 2–10–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–1151]

RIN 1625–AA08

Special Local Regulations; Krewe of Charleston Mardi Gras Boat Parade, Charleston Harbor, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for the Krewe of Charleston Mardi Gras Boat Parade on the Ashley River and in Charleston Harbor in Charleston, South Carolina. This special local regulation is necessary to provide for the safety of life on navigable waters during the marine parade. The special local regulation will temporarily restrict vessel traffic in a portion of the Ashley River and Charleston Harbor, preventing non-participant vessels from entering the regulated area.

DATES: This rule is effective from 10 a.m. until 2 p.m. on February 12, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1151 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1151 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 Lieutenant Julie Blanchfield, Sector Charleston Waterways Management Division, Coast Guard; telephone 843–740–3184, e-mail *Julie.E.Blanchfield@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the Krewe of Charleston Mardi Gras Boat Parade with sufficient time to publish an NPRM in advance of the effective date of this rule. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to marine parade participants as well as the general public.

For the same reason discussed above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

Background and Purpose

On February 12, 2011, the Krewe of Charleston Mardi Gras Boat Parade is scheduled to take place. The marine parade will consist of 20 to 30 vessels. The parade will commence at the Charleston City Marina, transit the Ashley River, head north between Shutes Folly Island and the Charleston peninsula, and then turn around in Customhouse Reach. The marine parade will then return to the Charleston City Marina by the same route. The marine parade poses a danger to mariners located in or transiting the area. These special local regulations are necessary to protect marine parade participant vessels, spectator vessels, and other vessels from the hazards associated with the marine parade.

Discussion of Rule

The special local regulations consist of a series of buffer zones around vessels participating in the Krewe of Charleston Mardi Gras Boat Parade. These buffer zones are as follows: (1) All waters within 500 yards in front of the lead parade vessel; (2) all waters within 100 yards behind the last parade vessel; and (3) all waters within 50 yards on either side of all marine parade participant vessels. Information regarding the identity of the lead parade vessel and the last parade vessel will be provided prior to the marine parade via broadcast notice to mariners and marine safety information bulletins. Persons and vessels are prohibited from entering, transiting through, anchoring, or remaining within the buffer zones unless specifically authorized by the Captain of the Port Charleston or a designated representative. These special local regulations will be effective from 10 a.m. until 2 p.m. on February 12, 2011.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This rule may have some impact on the public, but these potential impacts will be minimal for the following reasons: (1) The rule will be in effect for four hours; (2) although persons and vessel will not be able to enter, transit through, anchor in, or remain within the buffer zones without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the effective period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the buffer zones if authorized by the Captain of the Port Charleston or a designated representative; and (4) advance notification will be made to the local maritime community via broadcast notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities.

The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Ashley River and Charleston Harbor encompassed within the buffer zones from 10 a.m. until 2 p.m. on February 12, 2011. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.T07–1151 to read as follows:

§ 100.T07–1151 Special Local Regulations; Krewe of Charleston Mardi Gras Boat Parade, Charleston Harbor, Charleston, SC.

(a) *Regulated Area.* The following buffer zones are regulated areas during the Krewe of Charleston Mardi Gras Boat Parade: All waters within 500 yards in front of the lead parade vessel; all waters within 100 yards behind the last parade vessel; and all waters within 50 yards on either side of all marine parade participant vessels. The identity of the lead parade vessel and the last parade vessel will be provided prior to the marine parade via broadcast notice to mariners and marine safety information bulletins. The parade will commence at the Charleston City Marina, transit the Ashley River, head north between Shutes Folly Island and the Charleston peninsula, and then turn around in Customhouse Reach. The parade will then return to the Charleston City Marina by the same route.

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

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16 to seek authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such permission must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the marine parade and regulated areas through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 10 a.m. until 2 p.m. on February 12, 2011.

Dated: January 29, 2011.

William D. Baumgartner,

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

[FR Doc. 2011–2948 Filed 2–10–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0838; FRL–8863–9]

1,4-Benzenedicarboxylic Acid, Dimethyl Ester, Polymer With 1,4-Butanediol, Adipic Acid, and Hexamethylene Diisocyanate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 1,4-benzenedi carboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate (CAS Reg. No. 55231–08–8), minimum number average molecular weight (in amu) 30,000, when used as an inert ingredient (component of controlled release agent) in honeybee hive miticide formulations under regulations for inert ingredients used pre-harvest (growing crops only). NOP Apiary Products USA, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate.

DATES: This regulation is effective February 11, 2011. Objections and requests for hearings must be received on or before April 12, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0838. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* 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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0838 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 12, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0838, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Exemption

In the **Federal Register** of October 22, 2010 (75 FR 65321) (FRL–8851–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 0E7780) by NOD Apiary Products USA Inc., 8345 NW. 66th Street #8418, Miami, FL 33166. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate (CAS Reg. No. 55231–08–8) when used as an inert ingredient (component of controlled release agent) in miticide formulations applied to honeybee hives. That notice referenced a summary of the petition prepared by NOD Apiary Products USA Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

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

Consistent with section 408(c)(2)(A) of FFDCA, and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate follows.

A. Toxicological Profile

1,4-Benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate is a polyester-type polymer. The Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk to human health or the environment. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 1,4-Benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets all of the following criteria, with the exception of the "polymers which degrade, decompose or depolymerize" criterion (specified in 40 CFR 723.250(e) below),

that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, in order to meet the low risk polymer criteria, the polymer also meets as required the exemption criteria specified in 40 CFR 723.250(e)(3) regarding polyester polymers made solely from specified reactants. 1,4-Benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate does undergo biodegradation in the environment and thus does not meet criterion number 4. listed in this unit; however, the Agency believes that this biodegradation in the environment is not a safety concern for humans because information provided by the petitioner as well as information contained in the environmental assessment that was part of the Food and Drug Administration Food Contact Notification (FDA FCN) indicates that the polymer would ultimately biodegrade into carbon dioxide and water and not be a concern to humans or the environment. This determination is further supported by biodegradation and ecotoxicity testing of a representative material in which the substance was determined to be readily biodegradable and nontoxic to earthworms. Due to its large size (minimum number average molecular weight 30,000 amu) and the general conformance to the criteria for identifying low risk polymers under 40 CFR 723.250, 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate would not be expected to be absorbed through the intact gastrointestinal tract nor be anticipated to penetrate intact human skin. Inhalation exposure is not expected due to the nonvolatility of (component of controlled release agent) in honeybee hive miticide formulations. Because of its inability to enter systemic circulation when used as an inert ingredient in pesticide formulations 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate is essentially nontoxic. 1,4-Benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate has also been accepted by the FDA as being safe for use as a food contact substance to be used with all food types as a single-use film or coating under section 409(h)(2) of the FFDCA (Effective Food Contact Notification (FCN) No. 916). Based on the assessment in this unit, the Agency has concluded that a standard battery of toxicological studies are not necessary.

B. Toxicological Points of Departure/ Levels of Concern

Due to the low potential hazard and lack of an identified hazard endpoint for 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate, the Agency has determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses and drinking water.* In evaluating dietary exposure to 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate, EPA considered exposure under the proposed exemption from the requirement of a tolerance. The primary route of dietary exposure to 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate from its use as an inert ingredient in pesticide products would be through consumption of honey. Use of 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate in miticide products applied to treat honeybee hives may possibly also result in exposure through drinking water (from runoff). Dietary exposure to 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate may also result from its use as a food contact substance. Because no hazards associated with dietary exposure were identified for 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate, a quantitative dietary exposure assessment for 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate was not conducted.

2. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). Since there are no residential uses of pesticide products containing 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate as an inert ingredient, residential exposures are not expected and a residential exposure assessment was not conducted.

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

EPA has not found 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate to share a common mechanism of toxicity with any other substances, and 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, *see* EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Due to the large molecular weight of 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate it is unlikely that it will enter systemic circulation from either the gastrointestinal tract or intact human skin. As a result, it is unlikely to elicit a toxic response in infants and children when used as an inert ingredient in pesticide products; therefore EPA did not use a safety factor analysis for assessing risk. For similar reasons, the additional safety factor for the protection of infants and children is not necessary.

E. Aggregate Risks and Determination of Safety

As indicated in this unit, 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate would be incapable of entering systemic circulation and therefore, unable to elicit a toxic response in humans. Taking into consideration all available information on 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate under reasonable foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.920 for residues of 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate, minimum number average molecular weight (in amu) 30,000 when used as an inert ingredient (component of controlled release agent) in honeybee hive miticide formulations is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.920 for 1,4-benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate (CAS Reg. No. 55231–08–8), minimum number average molecular weight (in amu) 30,000, when used as an inert ingredient (component of controlled release agent) in honeybee hive miticide formulations.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 4, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.920, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
1,4-Benzenedicarboxylic acid, dimethyl ester, polymer with 1,4-butanediol, adipic acid, and hexamethylene diisocyanate, minimum number average molecular weight (in amu) 30,000 (CAS Reg. No. 55231–08–8).	For use in honeybee hive miticide formulations.	Component of controlled release agent.
* * *	* *	* *

[FR Doc. 2011–3111 Filed 2–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0982; FRL–8859–6]

Fludioxonil; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of fludioxonil in or on pineapple. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on pineapple. This regulation establishes a maximum permissible level for residues of fludioxonil in or on this commodity. The time-limited tolerance expires on December 31, 2013.

DATES: This regulation is effective February 11, 2011. Objections and requests for hearings must be received on or before April 12, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION** section).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0982. All documents in the docket are listed in the docket index available in *http://www.regulations.gov.* 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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–9356; *e-mail address: conrath.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. How can I file an objection or hearing request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0982 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 12, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0982, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for residues of fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile), in or on pineapple at 13 parts per million (ppm). This time-limited tolerance expires on December 31, 2013.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.,* without having received any petition from an outside party.

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Fludioxonil on Pineapple and FFDCA Tolerances

The applicant stated that unforeseen changes in available options for shipping Hawaiian pineapple to the mainland of the United States resulted in increased storage and transport time for the fruit. The overall increased shipment time is allowing surface molds to become established, which is leading to rejection, downgrading, or dumping of the unacceptable fruit. The Applicant stated that because of this unanticipated situation, an emergency situation exists, with significant economic losses suffered. Further, the Applicant asserts that without a suitable fungicide, such as fludioxonil, to address this issue, the future viability of the pineapple industry in Hawaii is threatened.

After having reviewed the submission, EPA determined that an emergency condition exists for this State, and that the criteria for approval of an emergency exemption are met. EPA has authorized a specific exemption under FIFRA section 18 for the use of fludioxonil on Hawaiian pineapple for control of surface molds.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of fludioxonil in or on pineapple. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although this time-limited tolerance expires on December 31, 2013, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amount specified in the tolerance remaining in or on pineapple after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this time-limited tolerance at the time of that application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any decisions about whether fludioxonil meets FIFRA's registration requirements for use on pineapple or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of fludioxonil by a State for special local needs under FIFRA section 24(c). Nor does this tolerance by itself serve as the authority for persons in any State other than Hawaii to use this pesticide on the applicable crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for fludioxonil, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerance for residues of fludioxonil on pineapple at

13 ppm. EPA's assessment of exposures and risks associated with establishing the time-limited tolerance follows.

A. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the level at which no adverse effects are observed (the NOAEL) and the lowest level at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, *see http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for fludioxonil used for human risk assessment can be found at *http://www.regulations.gov* in document "Fludioxonil. Human Health Risk assessment for a Section 18 Emergency Tolerance on Pineapple," dated August 4, 2010, p. 23–24 in Docket ID number EPA–HQ–OPP–2010–0982.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fludioxonil, EPA considered exposure under the time-limited tolerance established by this action as well as all existing fludioxonil tolerances in 40 CFR 180.516. EPA assessed dietary exposures from fludioxonil in food as follows:

i. *Acute exposure.* Adverse effects from acute exposure were identified for fludioxonil for the population subgroup females 13–49 years old. The acute population adjusted dose (aPAD) is set at 1.0 milligrams/kilograms/day (mg/kg/day) based upon acute effects of increased incidence of fetuses and litters with dilated renal pelvis and dilated ureter seen in the rat developmental study. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted an acute dietary assessment assuming established and proposed tolerance-level residues for all commodities and default 100 percent crop treated (PCT) information for the population subgroup females 13–49 years old. No anticipated residue or estimated PCT data were used. The estimated peak drinking water concentration of 108 parts per billion (ppb) was directly incorporated into the acute risk assessment. There were no significant toxicological effects attributable to a single exposure (dose) for the general population or any other population subgroups; therefore these populations' subgroups were not included in this assessment. For food and drinking water, the exposure to females 13–49 years old (the only population subgroup demonstrating acute effects) utilized 15% of the aPAD at the 95th percentile of exposure distribution.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a chronic dietary assessment assuming established and proposed tolerance-level residues with the exception of the following: Anticipated residues (ARs) were generated for apple, grapefruit, lemon, lime, orange, pear, tomato, lettuce (head and leaf), fresh parsley, *Brassica* leafy vegetables (crop group 5), grape, cherry, peach, and plum based upon field trial data. Empirical processing factors were determined from processing studies for the juices of tomato, apple, grapefruit, lemon, lime, grape, and orange, and for raisins; default processing factors were used in all other instances. No PCT data were used (100% crop treated was assumed). The estimated chronic drinking water concentration of 53 ppb was directly incorporated into the assessment. Food and water consumption were compared to the chronic population adjusted dose (cPAD) of 0.03 mg/kg/day, which is based upon the chronic effect of decreased weight gain in females seen in the 1-year dog feeding study. For food and water consumption, the chronic exposure to fludioxonil utilized 26% of the cPAD for the general U.S. population and 88% of the cPAD for children 1–2 years old, the most highly exposed population subgroup.

iii. *Cancer.* Based on the available data, EPA has determined that fludioxonil is a "Group D" chemical, not classifiable as to human carcinogenicity, and poses a negligible cancer risk. Cancer studies with fludioxonil only showed marginal evidence of cancer in one sex of one species. There was no evidence of carcinogenicity in mice when tested up to the highest dose of 7,000 ppm. There was no evidence of carcinogenicity in male rats, but there was a statistically significant increase, both trend and pairwise, of combined hepatocellular tumors in female rats. The pairwise increase for combined tumors was statistically significant, but only at p=0.03, which is not a strong indication of a positive effect. Further, statistical significance was only found when liver adenomas were combined with liver carcinomas. Finally, the increase in these tumors was within, but at the high end, of the historical controls. Fludioxonil was not mutagenic in the tests for gene mutations. However, based on the induction of polyploidy in the *in vitro* Chinese hamster ovary cell cytogenetic assay and the suggestive evidence of micronuclei induction in rat hepatocytes *in vivo,* additional mutagenicity testing was performed in three studies specifically designed to address the concerns regarding aneuploidy. The results of these assays were negative for aneuploidy activity. Therefore, the Agency concluded that a dietary exposure assessment for assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use PCT information in the dietary assessment for fludioxonil. One hundred percent of the pineapple crop was assumed treated.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to section 408(f)(1) of FFDCA that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by section 408(b)(2)(E) of FFDCA and authorized under section 408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Anticipated residue data were used in the chronic (non-cancer) dietary risk analyses but not in the acute dietary risk analysis. For certain tolerances, the anticipated residue values were determined from the field trial studies. Additionally, results of processed commodities studies show that fludioxonil residues do not concentrate to the extent that the existing crop tolerances would be exceeded.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fludioxonil in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fludioxonil. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of fludioxonil for acute exposures are estimated to be 108 ppb for surface water and 0.4 ppb for ground water. The EDWCs for chronic exposures for non-cancer assessments are estimated to be 53 ppb for surface water and 0.4 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure models. For acute dietary risk assessment, the water concentration value of 108 ppb was used to assess the contribution of fludioxonil from drinking water. For chronic dietary risk assessment, the water concentration of value 53 ppb was used to assess the contribution of fludioxonil from drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fludioxonil is currently registered for the following uses that could result in residential exposures: Residential turf and ornamental use, restricted to commercial applicators only. EPA assessed residential exposure using the following assumptions: The use on pineapple discussed in this document does not result in any residential non-occupational exposures. Since there are no short- or intermediate-term dermal toxicity endpoints for fludioxonil, only a toddler post-application assessment for incidental ingestion exposures to treated lawns was conducted (for all child/infant subgroups). The combined short-term oral exposure risk estimate, which includes hand-to-mouth, object-to-mouth and soil ingestion pathways, was determined to be 0.013 mg/kg bw/day, while the intermediate-term was determined to be 0.0074 milligrams/kilograms of bodyweight/day (mg/kg bw/day). It should be noted that each of the incidental oral assessments (*i.e.,* hand-to-mouth, object-to-mouth and soil ingestion) are considered conservative. Therefore, combining all the assessments is expected to provide a highly conservative assessment of children's incidental oral exposure.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

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

C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA, as modified by the Food Quality Protection Act (FQPA), provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines, based on reliable data, that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no quantitative or qualitative evidence of increased susceptibility following *in utero* exposure of rats and rabbits or following prenatal/postnatal exposure of rats. In the developmental study in rats, there was an increase in the number of fetuses and litters with dilated renal pelvis and dilated ureter, as well as a reduction in maternal body weight gain, at the lowest observed adverse effect level. The developmental effect was considered to be related to maternal toxicity rather than an indication of increased susceptibility. Since the developmental effects occurred at the same exposure levels that caused maternal effects, no evidence of increased susceptibility in rats was demonstrated from the developmental study. In the 2-generation rat reproduction study, offspring toxicity was seen at the dose that produced parental (maternal) toxicity. The maternal toxicity was manifested as increased clinical signs, decreased body weight, body weight gain and food consumption. Fetal toxicity was manifested as decreased weight gain in pups. Since developmental effects occurred at the same exposure levels that caused maternal effects, maternal and fetal toxicity were comparable, and it was concluded that there is no increased susceptibility indicated by results from the 2-generation reproduction study. In rabbits, no developmental toxicity was seen up to the highest dose tested which demonstrated maternal toxicity, and therefore it is concluded that there is no evidence of increased susceptibility demonstrated in rabbits.

3. *Conclusion.* EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. There are no residual uncertainties in the toxicity database. Existing data are sufficient for endpoint selection for exposure/risk assessment. The fludioxonil toxicity database is complete with the exception of an immunotoxicity study, and acute and subchronic neurotoxicity studies. The immunotoxicity and acute and subchronic neurotoxicity studies are now required by new data requirements for conventional pesticide registration (40 CFR part 158). The available data do not show potential for neurotoxicity or immunotoxicity. The overall weight-of-evidence suggests that fludioxonil does not directly target the immune system. Further, there is no evidence of

neurotoxicity or neuropathology in the fludioxonil database. Therefore, the Agency does not believe that the immunotoxicity and acute and chronic neurotoxicity studies will result in a lower POD than that currently in use for overall risk assessment. Thus, the Agency believes that a database uncertainty factor is not needed to account for lack of these studies.

ii. There is no indication that fludioxonil is a neurotoxic chemical and therefore EPA finds no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. There is no evidence that fludioxonil results in increased susceptibility of *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT, tolerance-level residues, and anticipated residues as follows: Anticipated residue values for apple, grapefruit, lemon, lime, orange, pear, tomato, head lettuce, leaf lettuce, grape, cherry, peach, and plum were generated from field trials; anticipated residues were also determined from processing studies for raisins, and for the juice of apple, grape, grapefruit, lemon, lime, orange and tomato. These data are reliable and will not underestimate the exposure and risk. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fludioxonil in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fludioxonil.

D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Based on the explanation in Unit IV.B.3, regarding residential use patterns, acute residential exposure to residues of fludioxonil is not expected. Therefore, since the acute aggregate risk assessment only includes exposure from food and water, no further calculations are necessary beyond the acute dietary analysis. There were no significant toxicological effects attributable to a single exposure (dose) for the general population or any other population subgroups; therefore these population subgroups were not included in this assessment. An acute dietary assessment was therefore conducted for the population subgroup females 13–49 years old. Using the exposure assumptions discussed in this unit for acute exposure, the acute aggregate exposure (food and water) to fludioxonil will occupy 15% of the aPAD for females 13–49 years old.

2. *Chronic risk.* Based on the explanation in IV.B.3, unit regarding residential use patterns, chronic residential exposure to residues of fludioxonil is not expected. Therefore, since the chronic aggregate risk assessment only includes exposure from food and water, no further calculations are necessary beyond the chronic dietary analysis. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic aggregate exposure to fludioxonil (food and water) utilized 88% of the cPAD for children 1–2 years old, the population subgroup receiving the greatest exposure. For the U.S. population the chronic aggregate exposure (food and water) utilized 26% of the cPAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fludioxonil is currently registered for uses that could result in short- and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures to fludioxonil. Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded that combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs for the most highly exposed subgroup, children 1–2 years old, of 250 for short-term exposures and 100 for intermediate-term exposures. Because EPA's level of concern for fludioxonil is a MOE of less than 100, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Fludioxonil is classified as a "Group D" chemical, as discussed previously, and not classifiable as to human carcinogenicity. However, EPA expects the cancer risk of fludioxonil to be negligible.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to fludioxonil residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology (high-pressure liquid chromatography method AG–597B) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; *telephone number:* (410) 305–2905; *e-mail address: residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by section 408(b)(4) of FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, section 408(b)(4) of FFDCA requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for fludioxonil on pineapple.

VI. Conclusion

For the reasons described above, a time-limited tolerance is established for residues of fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile), in or on pineapple at 13 ppm. This tolerance expires on December 31, 2013.

VII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under sections 408(e) and 408(l)(6) of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866,

entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with sections 408(e) and 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 24, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.516 is amended by alphabetically adding "pineapple" to the table in paragraph (b) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
Pineapple	13	12/31/13
* *	* *	* *

* * * * *

[FR Doc. 2011–2405 Filed 2–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0217; FRL–8858–3]

Clothianidin; Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of clothianidin in or on rice, seed. Valent U.S.A. Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). The tolerances expire on June 23, 2012.

DATES: This regulation is effective February 11, 2011. Objections and requests for hearings must be received on or before April 12, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0217. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* 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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Marianne Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8043; e-mail address: *lewis.marianne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to accessing electronically available documents at *http://www.regulations.gov,* you may access this **Federal Register** document electronically through EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0217 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 12, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0217, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg., 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petitioned-for Tolerances

In the **Federal Register** of May 19, 2010 (75 FR 28009) (FRL–8823–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0G7682) by Valent U.S.A Corporation, P.O. Box 8025 Walnut Creek, CA 94596. The petition requested that 40 CFR 180.586 be amended by establishing tolerances for residues of the insecticide clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on rice, seed at 0.01 parts per million (ppm). That notice referenced a summary of the petition prepared by Valent U.S.A. Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. One comment was received endorsing the registration of this seed treatment.

Valent has requested an experimental use permit and this tolerance to determine the effectiveness of clothianidin as a rice, seed treatment to control rice weevil and grape colaspis. This tolerance will expire on June 23, 2012.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for clothianidin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with clothianidin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

EPA considered the toxicity of clothianidin as well as several metabolites and degradates in conducting this risk assessment. Metabolites/degradates of concern in plants include parent and TMG for leafy and root and tuber vegetables; parent-only for other crops; and parent, TZNG and MNG for rotational crops. For livestock commodities, the metabolites/degradates of concern include: parent and TZU, TZG, TZNG and ATMG-pyruvate for ruminants; and parent and TZU, TZG, TZNG, and ATG-acetate for poultry. Acute toxicity and genotoxicity data are available for several metabolites/degradates of clothianidin. Given that the points of departure used for risk assessment are well below the LD_{50} levels observed in the acute toxicology studies and that clothianidin

and its metabolites/degradates of toxicological concern are similar in structure, EPA is assuming that these compounds are toxicologically equivalent to clothianidin with respect to the endpoints being used for risk assessment.

Clothianidin and its metabolites and degradates have relatively low acute toxicity via oral, dermal and inhalation routes of exposure; however, acute oral administration of clothianidin in mouse and the TMG metabolite in rat showed evidence of increased relative toxicity. There is no evidence of dermal sensitization or eye irritation with the exception of the clothianidin-triazan intermediate, which is a dermal sensitizer. The available data indicate that there are no consistent target organs in mammals; however, some effects noted in the liver, hematopoietic system and kidney are similar to effects from other neonicotinoid insecticides.

In subchronic oral studies, the dog seemed to be more sensitive to clothianidin than the rat. In addition to decreases in body weight and body weight gains observed in both animals, dogs also displayed decreased white blood cells, albumin and total protein, as well as some anemia. Long-term dietary administration of clothianidin did not result in a wider spectrum of effects in the dog; in contrast, the chronic feeding studies in rats showed additional effects in the liver, ovaries and kidneys. In the mouse chronic oral study, increases in vocalization and decreases in body weight and body weight gain were noted.

Based on the lack of significant tumor increases in two adequate rodent carcinogenicity studies, EPA has classified clothianidin as "not likely to be carcinogenic to humans." A bone marrow micronucleus assay in mice showed that clothianidin is neither clastogenic nor aneugenic up to a toxic oral dose. Additionally, a study on the livers of Wistar male mice showed no induction of unscheduled DNA sysnthesis up to the limit dose; therefore, mutagenicity is not of concern.

Clinical signs of neurotoxicity were exhibited in both rats (decreased arousal, motor activity and locomotor activity) and mice (decreased spontaneous motor activity, tremors and deep respirations) in acute neurotoxicity studies following exposure by gavage; however, no indications of neurotoxicity were observed following dietary exposure in the subchronic neurotoxicity study in rats.

There was no evidence of increased quantitative or qualitative susceptibility of rat or rabbit fetuses following *in utero* exposure to clothianidin in developmental studies; however, increased quantitative susceptibility of rat pups was seen in both the reproduction and developmental neurotoxicity studies. In the rat reproduction study, offspring toxicity (decreased body weight gains and absolute thymus weights in pups, delayed sexual maturation and an increase in stillbirths) was observed in the absence of maternal effects. In the developmental neurotoxicity study in rats, offspring effects (decreased body weights, body weight gains, motor activity and acoustic startle response amplitude) were noted at doses lower than those resulting in maternal toxicity.

Decreased absolute and relative thymus and spleen weights were observed in multiple studies; these studies showed possible evidence of effects on the immune system. In addition, juvenile rats in the rat reproduction study appeared to be more susceptible to these effects. However, a guideline immunotoxicity study showed no evidence of clothianidin-mediated immunotoxicity in adult rats and a developmental immunotoxicity study demonstrated no increased susceptibility for offspring with regard to immunotoxicity.

Specific information on the studies received and the nature of the toxic effects caused by clothianidin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document "Clothianidin—Human Health Risk Assessment of the Requested Experimental Use Permit as a Rice Seed Treatment" on p. 10–13 in docket ID number EPA–HQ–OPP–2010–0217.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, *see http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for Clothianidin used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CLOTHIANIDIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	NOAEL = 25 milligrams/kilograms/day (mg/kg/day). UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.25 mg/kg/day. aPAD = 0.25mg/kg/day.	Rabbit developmental study LOAEL = 75 mg/kg/day based on increased litter incidence of a missing lobe of the lung.
Acute dietary General population ..	NOAEL = 25 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.25 mg/kg/day. aPAD = 0.25 mg/kg/day.	Special neurotoxicity/pharmacological study in mice LOAEL = 50 mg/kg/day based on transient signs of decreased spontaneous motor activity, tremors and deep respirations.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CLOTHIANIDIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Chronic dietary (All populations including infants and children).	NOAEL= 9.8 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.098 mg/kg/day. cPAD = 0.098 mg/kg/day.	2–Generation reproduction study LOAEL = 31.2 mg/kg/day based on decreased body weight gains and delayed sexual maturation, decreased absolute thymus weights in F1 pups and increased stillbirths in both generations.
Incidental oral (short and intermediate term).	NOAEL= 9.8 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	2–Generation reproduction study LOAEL = 31.2 mg/kg/day based on decreased body weight gains and delayed sexual maturation, decreased absolute thymus weights in F1 pups.
Dermal (all durations)	Oral study NOAEL = 9.8 mg/kg/day (dermal absorption rate = 1%. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	2–Generation reproduction study LOAEL = 31.2 mg/kg/day based on decreased body weight gains and delayed sexual maturation, decreased absolute thymus weights in F1 pups and increased stillbirths in both generations.
Inhalation (all durations)	Oral study NOAEL= 9.8 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	2–Generation reproduction study LOAEL = 31.2 mg/kg/day based on decreased body weight gains and delayed sexual maturation, decreased absolute thymus weights in F1 pups and increased stillbirths in both generations.
Cancer (Oral, dermal, inhalation) ..	"Not likely to be Carcinogenic to Humans."		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to clothianidin, EPA considered exposure from the petitioned-for tolerances as well as all existing clothianidin tolerances in 40 CFR 180.586. EPA assessed dietary exposures from clothianidin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for clothianidin. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food from use of clothianidin, EPA used tolerance-level residues, empirical processing factors and assumed 100 percent crop treated (PCT) for all commodities. Clothianidin is a major metabolite of thiamethoxam, and there are a number of crops for which uses of both clothianidin and thiamethoxam have been registered. The labels for the various end-use products containing these active ingredients prohibit the application of both active ingredients to the same crop during a growing cycle. Due to that restriction and the assumption of 100 PCT, a single value reflecting the greatest clothianidin residue from either active ingredient has been used for crops listed for use with both active ingredients (versus combined estimates from clothianidin and from thiamethoxam). Generally, this assessment uses the established or recommended clothianidin tolerance for crops having tolerances for both compounds (the exception being low-growing berry, subgroup 13-07G, which is based on observed clothianidin residues in thiamethoxam strawberry field trials). For foods with thiamethoxam tolerances but without clothianidin tolerances, maximum residues of clothianidin observed in thiamethoxam field trials have been used in these assessments. These include meats, meat by-products, artichoke, tropical fruits, coffee, hop, mint, rice, and strawberry. The metabolism of clothianidin is complex, with a few major (≤ 10% of the total radioactive residues) and numerous minor metabolites. Metabolites/degradates of concern in plants include clothianidin and TMG for leafy and root and tuber vegetables; parent-only for other crops; and parent, TZNG and MNG for rotational crops. For livestock commodities, the metabolites of concern include: Parent and TZU, TZG, TZNG, and ATMG-pyruvate for ruminants; and parent and TZU, TZG, TZNG, and ATG-acetate for poultry. For leafy vegetables the EPA required analysis for residues of TMG along with parent in field trial samples. Residues of TMG were shown to occur in leafy vegetables at levels approximately 10-fold below those of clothianidin. EPA has not included these metabolites in the tolerance expression for plant or animal commodities because the metabolites are only found in certain commodities, including the metabolites would create tolerance harmonization issues with Canada, and monitoring residues of clothianidin based on parent only would be representative of total clothianidin residues and thus adequate for enforcement. Because the metabolites are not included in the tolerance expressions, an adjustment factor of 1.1 has been incorporated into the assessment for leafy vegetables to account for the presence of the metabolite TMG, and an adjustment factor of 1.5 has been incorporated for livestock-derived commodities (milk) to account for the presence of metabolites

TZU, TZG, TZNG, ATMG-pyruvate and ATG-acetate. The 1.1 adjustment factor is based on field trial data showing TMG does not exceed 10% of the parent compound residue level in leafy vegetables and the 1.5 factor was based on metabolism data.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assessed chronic dietary exposure using the same residue information and assumptions regarding metabolites/degradates as in the acute exposure analysis.

iii. *Cancer.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, EPA has classified clothianidin as "not likely to be carcinogenic to humans." Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* For foods with thiamethoxam tolerances but without clothianidin tolerances, maximum residues of clothianidin observed in thiamethoxam field trials have been used in these assessments. For all commodities, 100 PCT was assumed.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for Clothianidin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of Clothianidin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models the estimated drinking water concentrations (EDWCs) of Clothianidin for surface water are estimated to be 7.29 parts per billion (ppb) for acute exposures and 1.35 ppb for chronic exposures. For ground water, the EDWC is estimated to be 5.88 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. The water concentration value of 7.29 ppb was used to assess the contribution to drinking water for the acute dietary assessment. For chronic dietary risk assessment, the water concentration of value 5.88 ppb was used.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clothianidin is currently registered for use on turf. Residential handler exposure is not expected from the currently registered or proposed uses of clothianidin since these products are to be applied by commercial applicators. Adult short- and intermediate-term postapplication exposures were assessed for dermal exposures from commercial applications (via granular push-type spreaders), dermal post-application contact and golfer postapplication contact. For toddlers, short- and intermediate-term postapplication incidental oral (hand-go-mouth and soil ingestion) and dermal risks were assessed for exposure to treated turf.

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

Clothianidin is a member of the neonicotinoid class of pesticides and is a major metabolite of another neonicotinoid, thiamethoxam. Structural similarities or common effects do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. Although clothianidin and thiamethoxam bind selectively to insect nicotinic acetylcholine receptors (nAChR), the specific binding site(s)/receptor(s) for clothianidin, thiamethoxam and the other neonicotinoids are unknown at this time. Additionally, the commonality of the binding activity itself is uncertain, as preliminary evidence suggests that clothianidin operates by direct competitive inhibition, while thiamethoxam is a non-competitive inhibitor. Furthermore, even if future research shows that neonicotinoids share a common binding activity to a specific site on insect nAChRs, there is not necessarily a relationship between this pesticidal action and a mechanism of toxicity in mammals. Structural variations between the insect and mammalian nAChRs produce quantitative differences in the binding affinity of the neonicotinoids towards these receptors which, in turn, confers the notably greater selective toxicity of this class towards insects, including aphids and leafhoppers, compared to mammals. While the insecticidal action of the neonicotinoids is neurotoxic, the most sensitive regulatory endpoint for clothianidin is based on unrelated effects in mammals, including changes in body and thymus weights, delays in sexual maturation, and still births. Additionally, the most sensitive toxicological effect in mammals differs across the neonicotinoids (such as testicular tubular atrophy with thiamethoxam, and mineralized particles in thyroid colloid with imidacloprid). Thus, there is currently no evidence to indicate that neonicotinoids share common mechanisms of toxicity, and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the neonicotinoids. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity, and to evaluate the cumulative effects of such chemicals, *see* the policy statements concerning common mechanism determinations, and procedures for cumulating effects from substances found to have a common mechanism, released by OPP on EPA's Web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no indication of increased quantitative or qualitative susceptibility, as compared to adults, of rat and rabbit fetuses to *in utero* exposure in clothianidin developmental studies. However, increased quantitative susceptibility was observed in both the developmental neurotoxicity and rat multi-generation reproduction studies. In the developmental neurotoxicity study, offspring toxicity (decreased body weight gains, motor activity and acoustic startle response) was seen at a

lower dose than that which caused maternal toxicity. In the two-generation rat reproduction study, offspring toxicity (decreased body weight gains, delayed sexual maturation in males, decreased absolute thymus weights in F1 pups of both sexes and an increase in stillbirths in both generations) was seen at a lower dose than that which caused parental toxicity.

3. *Conclusion.* In the final rule published in the **Federal Register** of February 6, 2008 (73 FR 6851) (FRL–8346–9), EPA had previously determined that the FQPA SF for clothianidin should be retained at 10X because EPA had required the submission of a developmental immunotoxicity study to address the combination of evidence of decreased absolute and adjusted organ weights of the thymus and spleen in multiple studies in the clothianidin data base, and evidence showing that juvenile rats in the 2-generation reproduction study appear to be more susceptible to these potential immunotoxic effects. In the absence of a developmental immunotoxicity study EPA concluded that there was sufficient uncertainty regarding immunotoxic effects in the young that the 10X FQPA SF should be retained as a database uncertainty factor. Since that determination, EPA has received and reviewed an acceptable/guideline developmental immunotoxicity study, which demonstrated no treatment-related effects. Taking the results of this study into account as well as the rest of the data on clothianidin, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF for clothianidin were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for clothianidin is complete. As noted, the prior data gap concerning developmental immunotoxicity has been addressed by the submission of an acceptable developmental immunotoxicity study.

ii. A rat developmental neurotoxicity study is available and shows evidence of increased quantitative susceptibility of offspring. However, EPA considers the degree of concern for the developmental neurotoxicity study to be low for pre- and postnatal toxicity because the NOAEL and LOAEL were well characterized, and the doses and endpoints selected for risk assessment are protective of the observed susceptibility; therefore, there are no residual concerns regarding effects in the young.

iii. While the rat multi-generation reproduction study showed evidence of increased quantitative susceptibility of offspring compared to adults, the degree of concern is low because the study NOAEL and LOAEL have been selected for risk assessment purposes for relevant exposure routes and durations. In addition, the potential immunotoxic effects observed in the study have been further characterized with the submission of a developmental immunotoxicity study that showed no evidence of susceptibility. As a result, there are no concerns or residual uncertainties for pre- and postnatal toxicity after establishing toxicity endpoints and traditional UFs to be used in the risk assessment for clothianidin.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on assumptions that were judged to be highly conservative and health-protective for all durations and population subgroups, including tolerance-level residues for clothianidin uses, adjustment factors from metabolite data, empirical processing factors, and 100 PCT for all commodities. Additionally, EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to clothianidin in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children and adults as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by clothianidin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to clothianidin will occupy 23% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to clothianidin from food and water will utilize 19% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of Clothianidin is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Clothianidin is currently registered for on turf that could result in short-term and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures to Clothianidin. Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs of greater than 380 for all population subgroups. As the aggregate MOEs are greater than 100 (the LOC) for all population subgroups, including infants and children, short- and intermediate-term aggregate exposures to clothianidin are not of concern to EPA.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in mice and rats at does that were judged to be adequate to assess the carcinogenic potential, clothianidin was classified as "not likely to be carcinogenic to humans," and is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to clothianidin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method involves extraction of residues with acetonitrile/water, cleanup using solid phase extraction (SPE) cartridges, and analysis of clothianidin by liquid chromatography mass/mass spectrometry/mass spectrometry (LC/MS/MS).

The method may be requested from: Chief, Analytical Chemistry Branch,

Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for Clothianidin in/on rice, seed.

C. Revisions to Petitioned-for Tolerances

The tolerance is considered appropriate as proposed therefore no revisions were needed.

V. Conclusion

Therefore, a time-limited tolerance is established for residues of Clothianidin, in or on rice, seed at 0.01 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments (*65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 2, 2011.

G. Jeffery Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.586 is amended by redesignating paragraph (a) as (a)(1) and by adding paragraph (a)(2) to read as follows:

§ 180.586 Clothianidin; tolerances for residues.

(a) * * *

(2) Time-limited tolerances are established for residues of the insecticide clothianidin, including its metabolites and degradates. Compliance with the tolerance levels specified below is to be determined by measuring only clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on the following raw agricultural commodity:

Commodity	Parts per million	Expiration/revocation date
Rice, seed	0.01	6/23/12

* * * * *

[FR Doc. 2011–3110 Filed 2–10–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 07–294; 06–121, 02–277; 04–228; MM Docket Nos. 01–235, 01–317, 00–244; FCC 07–217]

Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements contained in FCC Form 303–S. The form changes were approved on February 2, 2011.

DATES: The amendments to FCC Form 303–S required as a result of the rule amendments adopted at 73 FR 28361, May 16, 2008, are effective on March 14, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Cathy Williams, *cathy.williams@fcc.gov* or on (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on February 2, 2011, OMB approved, for a period of three years, the information collection requirements contained in FCC Form 303–S. The Commission publishes this document to announce the effective date of FCC Form 303–S. *See In the Matter of Promoting Diversification of Ownership in the Broadcasting Services,* MB Docket Nos. 07–294, 06–121, 02–277; 04–228; MM Docket Nos. 01–235, 01–317, 00–244; FCC 07–217, 73 FR 28361, May 16, 2008.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on February 2, 2011, for the information collection requirements contained in FCC Form 303–S. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The OMB Control Number is 3060–0110 and the total annual reporting burdens for respondents for this information collection are as follows:

OMB Control Number: 3060–0110.

OMB Approval Date: February 2, 2011.

Expiration Date: February 28, 2014.

Title: Application for Renewal of Broadcast Station License, FCC Form 303–S; § 73.3555(d), Daily Newspaper Cross-Ownership.

Form Number: FCC Form 303–S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents/Responses: 3,821 respondents and 3,821 responses.

Estimated Time per Response: 1.25–12 hours.

Frequency of Response: Eight-year reporting requirement; Third-party disclosure requirement.

Total Annual Burden: 10,403 hours.

Total Annual Costs: $3,886,358.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the "*Order*") in MB Docket Nos. 07–294; 06–121; 02–277; 04–228; MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217. The *Order* adopted rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. Consistent with actions taken by the Commission in the *Order,* the following changes are made to FCC Form 303–S: The instructions have been revised to incorporate a definition of "eligible entity," which will apply to the Commission's existing Equity Debt Plus ("EDP") standard, one of the standards used to determine whether interests are attributable. Section II includes a new certification for licensees to certify that their advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements held by the licensee contain nondiscrimination clauses. The instructions for Section II have been revised to include a new description of the certification.

Second, Section III includes a new question, Item 4, requiring licensees to certify that, during the preceding license term, the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days, consistent with the Commission's rules. If a licensee cannot so certify, it must submit an exhibit specifying the exact dates in the preceding license term on which the station was silent or operating for less than its prescribed minimum hours. *See* 47 CFR 73.1740 (Commercial Broadcast Stations); 47 CFR 73.561 (Noncommercial Educational FM Stations); 47 CFR 73.850 (Low-power FM Stations); and 47 CFR 73.1745(b); 47 CFR 73.1740(b) (Noncommercial Educational AM Stations). *See also* 47 U.S.C. 309(k) (Statutory Standards for Broadcast Renewal Procedures); *Birach Broadcasting Corp.,* 16 FCC Rcd 5015, 5020 (2001) (holding that a station's failure to provide any service during the license term is material to whether it served the public interest, convenience, and necessity pursuant to Section 309(k)). Consistent with the holding in *Birach,* the Commission's rules for minimum operating schedules, and the renewal standards set forth in Section 309(k), Section III includes the new certification and the instructions to include a new description of the certification.

Section III, Item 7 (previously Item 6), has been revised to eliminate the requirement that full power AM and FM licensees submit an exhibit to demonstrate compliance with the Commission's maximum permissible radio frequency ("RF") electromagnetic exposure limits, in the event that they are unable or not eligible to use the RF worksheets contained in the instructions of the Form. All applicants continue to be required to certify that their facilities comply with the Commission's maximum permissible RF limits. The elimination of the exhibit requirement for radio broadcasters, conforms the question so it is now consistent with the requirements for licensees of broadcast television stations, translator (FM and TV stations), and low-power FM stations, who are not required to submit an exhibit. The instructions for Section III, Item 7 and Worksheet #1 Environmental have been revised accordingly.

Section V, Item 4 has been revised to clarify that Low Power TV ("LPTV") stations still need to file Form 396 with the renewal application, but that they may or may not need to file a public file report and post it to their Web site. The word "as" has been replaced with the word "if." The old version stated that stations are required to certify that they have created a public file report and posted it to their Web sites "as" required by regulation. The instructions have been revised to explain that for Section V, Item 4, only LPTV stations that are part of a station employment unit with full-power stations, where the unit employs at least five or more full-time employees, needs to file a public file report and post it to the station Web site. Other LPTV stations do not have to create a public file report because they do not have a public file.

Additionally, a small number of typographical errors have been corrected throughout the instructions and form.

Finally, the burden hours and burden costs published in the **Federal Register** on October 13, 2010, 75 FR 62816 have been reduced to reflect that only applicants for renewal of commercial broadcast stations are required to complete the new certification in Section II, Item 7 that their advertising sales agreements do not discriminate on the basis of race or ethnicity and that all such agreements contain nondiscrimination clauses.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–3050 Filed 2–10–11; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 76, No. 29
Friday, February 11, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 98

[Docket No. APHIS–2008–0043]

RIN 0579–AD20

Importation of Live Swine, Swine Semen, Pork, and Pork Products; Estonia, Hungary, Slovakia, and Slovenia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of animals and animal products to add Estonia, Hungary, Slovakia, and Slovenia to the region of the European Union that we recognize as a low-risk region for classical swine fever (CSF). Swine, swine semen, pork, and pork products may be imported into the United States from this region under certain conditions. We are proposing to remove one of these conditions, a 40-day holding period for swine semen and donor boars after the collection of swine semen, based on our determination that it is unnecessary. We are also proposing to add Estonia, Slovakia, and Slovenia to the list of regions we consider free of swine vesicular disease (SVD) and to add Slovakia and Slovenia to the list of regions considered free of foot-and-mouth disease (FMD) and rinderpest. These proposed actions would relieve some restrictions on the importation into the United States of certain animals and animal products from those regions, while continuing to protect against the introduction of CSF, SVD, FMD, and rinderpest into the United States.

DATES: We will consider all comments that we receive on or before April 12, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0043* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2008–0043, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0043.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Donald Link, Import Risk Analyst, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 920 Main Campus Drive Suite 200, Raleigh, NC 27606; (919) 855–7730.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including classical swine fever (CSF), foot-and-mouth disease (FMD), swine vesicular disease (SVD), and rinderpest. These are dangerous and communicable diseases of ruminants and swine.

The regulations in 9 CFR part 98 govern the importation of animal germplasm to prevent the introduction of contagious diseases of livestock and poultry into the United States. Subparts A and B of part 98 apply to animal embryos, and subpart C (§§ 98.30 through 98.38) applies to animal semen.

Sections 94.9 and 94.10 of the regulations list regions of the world that are declared free of, or low-risk for, CSF. The APHIS-defined EU CSF region, consisting of the 19 Member States of the EU that we currently recognize as a single region with regard to CSF, is currently the only region we consider low-risk for CSF. Sections 94.24 and 98.38 specify restrictions necessary to mitigate the risk of introducing CSF into the United States via pork, pork products, live swine, and swine semen from that region. We will discuss the restrictions on swine semen, found in § 98.38, at greater length later in this document.

Section 94.12 of the regulations lists regions that are declared free of SVD, and § 94.13 of the regulations lists regions that have been determined to be free of SVD, but that are subject to certain restrictions because of their proximity to, or trading relationships with, SVD-affected regions.

Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Section 94.11 of the regulations lists regions that have been determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

On May 1, 2004, Estonia, Hungary, Slovakia, and Slovenia became Member States of the EU. As part of the accession process, these new EU Member States adopted the legislation of the European Commission (EC) [1] regarding animal health, welfare, and identification, including legislation pertaining to CSF, FMD, and SVD. This legislation became the basis for new standard operating procedures for domestic animal health matters in Estonia, Hungary, Slovakia, and Slovenia by the time of their accession. Estonia, Hungary, Slovakia, and Slovenia also adopted the harmonizing

[1] The EC is the EU institution responsible for representing the EU as a whole. It proposes legislation, policies, and programs of action and implements decisions of the EU Parliament and Council.

EC legislation regarding sanitary measures applicable to import and trade in live animals and animal products.

Prior to joining the EU in 2004, the Government of Slovakia requested APHIS to evaluate its animal health status with respect to CSF in 1997, to SVD in 2001, and to FMD and rinderpest in 2002. Likewise, the Government of Hungary requested that APHIS evaluate its animal health status with respect to CSF in 2001. After joining the EU, the Government of Estonia made a similar request with respect to CSF and SVD in 2005, and, that same year, the Government of Slovenia made a request for APHIS to evaluate its animal health status with respect to CSF, SVD, FMD, and rinderpest. APHIS had previously listed Estonia as free of FMD and rinderpest in a final rule published in the **Federal Register** on May 30, 2002 (67 FR 37663–37664, Docket No. 01–041–2), and had listed Hungary as free of FMD and rinderpest in a final rule published in the **Federal Register** on June 1, 1994 (59 FR 28216–28218, Docket No. 93–172–2), and SVD in a final rule published in the **Federal Register** on August 2, 1973 (38 FR 20610–20611).

Summary of Proposed Changes

In this document, we are proposing to add Estonia, Hungary, Slovakia, and Slovenia to the APHIS-defined EU CSF region. We are also proposing to remove one of the conditions pertaining to the importation of swine semen from that region. With the exception of semen collected from swine in Denmark, Finland, the Republic of Ireland, Sweden, or the United Kingdom, we require that, before swine semen may be exported to the United States, the semen and donor boars be held at the semen collection center for at least 40 days following collection of the semen, and, along with all other swine at the semen collection center, exhibit no clinical signs of CSF. For reasons discussed later in this document, we have determined that this requirement is unnecessary.

We are also proposing to add Estonia, Slovakia, and Slovenia to the list of regions recognized as free of SVD, and to the list of SVD-free regions whose exports of pork and pork products to the United States are subject to certain restrictions to prevent the introduction of SVD into this country.

Additionally, we are proposing to add Slovakia and Slovenia to the list of regions recognized as free of FMD and rinderpest. We are also proposing to add Slovakia and Slovenia to the list of FMD and rinderpest-free regions whose exports of ruminant and swine meat and products to the United States are subject to certain restrictions to prevent the introduction of FMD and rinderpest into this country.

As part of our evaluation of their disease status, APHIS identified the smallest administrative units (AUs) within each of these EU Member States that we would consider designating as regions in the event of future animal disease outbreaks. *See* the discussion of these AUs under the section titled "Administrative Units."

The Low-Risk CSF Region in the EU; History

Before discussing our assessments of the animal health status of Estonia, Hungary, Slovakia, and Slovenia with regard to CSF and other diseases, and our determination that Estonia, Hungary, Slovakia, and Slovenia can be added to the APHIS-defined EU CSF region, we consider it helpful to explain how the region came about and how countries were added to that region. Later in this document, we will discuss under what conditions swine semen may currently be imported into the United States from that region, in order to provide context for the provision that we are proposing to remove from those requirements.

Traditionally, we have recognized countries either as affected with CSF or free of CSF. Pork and pork products from a country affected with CSF could be imported into the United States only after meeting rigorous processing and certification requirements; live swine, with a few, limited exceptions, could not be imported into the United States from such countries. Conversely, swine, pork, pork products, and semen from countries that we considered free of CSF could be imported into the United States under certain conditions.

In 1999, we prepared a risk analysis, titled "Biological Risk Analysis: Risk assessment and management options for imports of swine and swine products from the European Union—June 2, 1999," in response to a request from the EC that we recognize a region of 10 EU Member States as free of CSF. That analysis, along with another, supplemental risk analysis, "Risk Analysis for Importation of Classical Swine Fever Virus in Swine and Swine Products from the European Union—December 2000," took into consideration the CSF history of the 10 Member States in the EC's request, the CSF history of countries adjacent to this region, the veterinary infrastructure and policies of the region, and the historical volumes of imports into the United States of breeding swine, swine semen, pork, and pork products from the region. Moreover, the analyses also took into consideration the open borders among Member States of the EU, and the possibility of commingling of pork products from a CSF-free region and a CSF-affected region prior to their importation into the United States.

The analyses concluded that, because of this open-border policy, and because CSF was endemic in wild boar in several parts of the EU, it was likely that limited outbreaks of CSF would continue to occur in domestic swine in the region.

Based on the analyses, we decided that the unrestricted importation of swine, swine semen, pork, and pork products from the region could present a risk of introducing CSF into the United States. However, we also decided that this risk was low, and that the application of certain risk mitigation measures on the importation of these products would further reduce the risk of introduction of CSF into the United States. Therefore, we initiated a rulemaking that we finalized on April 7, 2003 (68 FR 16922–16941, Docket No. 98–090–5), to recognize a single region of 10 Member States or parts of Member States of the EU that we determined to present a low risk of introducing CSF into the United States.

In that rule, we mentioned that we considered the control mechanisms for CSF employed by the EU to be sufficient to mitigate any risk that continuing outbreaks of CSF in the EU could pose to swine, swine semen, pork, or pork products destined for export to the United States. We outlined these EU-imposed mitigation measures, which included measures to prevent widespread exposure and establishment of the disease; specific mitigation measures, such as wildlife surveillance and epidemiological investigations; and contingency plans establishing proactive approaches to CSF control. In sum, we stated that we considered the EU as a whole to be homogeneous with regard to CSF risk, regardless of individual outbreaks within Member States.

Accordingly, in a rulemaking that we finalized on May 19, 2006 (71 FR 29061–29072, Docket No. 02–046–2), we recognized the EU–15.[2] We considered the EU–15 to be those 15 Member States comprising the EU as of April 20, 2004: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Republic of Ireland, Spain, Sweden, and the United Kingdom (England, Scotland,

[2] To view this rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2005-0028.*

Wales, the Isle of Man, and Northern Ireland).

Second, in recognition of the presence of CSF within the EU, and the possibility of future outbreaks of the disease, we also recognized "restricted zones," or quarantined areas for CSF within the Member States of the EU–15. We defined a *restricted zone* in the regulations as "An area, delineated by the relevant competent veterinary authorities of the region in which the area is located, that surrounds and includes the location of an outbreak of CSF in domestic swine or detection of the disease in wild boar, and from which the movement of domestic swine is prohibited." We stated that, once a restricted zone was established, a prohibition on the importation of swine and swine products from that region into the United States would be immediate, with no action required by APHIS.

Finally, on November 28, 2007, we issued a final rule (72 FR 67227–67233, Docket No. APHIS–2006–0106) [3] that amended the regulations to add the Czech Republic, Latvia, Lithuania, and Poland to the low-risk region for CSF. The rule also removed the term "EU–15" and added "APHIS-defined EU CSF region" in its place, since the addition of these countries had rendered the former term obsolete.

We will now discuss the analyses that have led us to propose to include Estonia, Hungary, Slovakia, and Slovenia in the EU CSF region, to conclude that Estonia, Slovakia, and Slovenia are free of SVD, and to conclude that Slovakia and Slovenia are free of FMD and rinderpest.

APHIS Evaluations Regarding the CSF and SVD Status of Estonia, the CSF Status of Hungary, and the CSF, SVD, FMD, and Rinderpest Statuses of Slovakia and Slovenia

APHIS has conducted an evaluation regarding the CSF and SVD status of Estonia; an evaluation regarding the CSF status of Hungary; an evaluation regarding the CSF, SVD, FMD, and rinderpest status of Slovakia; and an evaluation regarding the CSF, SVD, FMD, and rinderpest status of Slovenia. The evaluations regarding Estonia and Slovakia were finalized in January 2011, the evaluation regarding Hungary in May 2009, and the evaluation regarding Slovenia in October 2007. Each evaluation may be viewed on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov). In the following paragraphs, we summarize our findings for each of the 11 factors set out in our procedures for requesting recognition of regions in 9 CFR 92.2 and summarize our risk considerations of these findings following our discussion of the factors.

Authority, Organization, and Veterinary Infrastructure

As stated above, Estonia, Hungary, Slovakia, and Slovenia have adopted the legislation of the EC regarding animal health, welfare, and identification, as well as sanitary measures applicable to import and trade in live animals and animal products. At the time of accession, Commission Decisions and Regulations concerning CSF, SVD, and FMD became directly applicable in the new EU Member States, whereas Council Directives were implemented in national legislation. Our evaluations document that Estonia, Hungary, Slovakia, and Slovenia have, in fact, implemented these directives; this documentation was corroborated by site visits.

APHIS concludes that the official veterinary services of Estonia, Hungary, Slovakia, and Slovenia have sufficient legal authority, personnel, and financial resources to carry out animal health activities quickly and efficiently. The official offices are well-organized, with clear lines of command and reporting, as well as sufficient autonomy at the local level to carry out the tasks assigned. Internal and external auditing practices are adequate to monitor for compliance with the provisions of the pertinent animal health legislation.

Disease History

CSF: The most recent outbreak of CSF in domestic swine in Estonia occurred in 1994. In Hungary, the most recent outbreak of CSF in domestic swine occurred in 1993. In Slovakia, the last outbreak of CSF in domestic swine occurred in 2008. In Slovenia, the last outbreak in domestic swine occurred in 1996.

In both Hungary and Slovakia, CSF is endemic within the wild boar population. We discuss this at greater length later in this document.

SVD: SVD has never been reported to have occurred in either Estonia or Slovenia. In 1972, there were 16 cases of SVD reported in Slovakia; in each case, the swine had been imported into the country.

FMD: FMD was last reported in Slovenia in 1968, and in Slovakia in 1973.

Rinderpest: Rinderpest was last reported in Slovakia in 1881, and in Slovenia in 1883; the countries are recognized by the World Organization for Animal Health (OIE) as being free of the disease.

Disease Status of Adjacent Regions

CSF: Estonia is bordered by Latvia to the south and Russia to the east. APHIS considers Latvia to be a low-risk region for CSF. APHIS has not evaluated Russia for its CSF status. However, Russia has experienced multiple outbreaks of CSF in domestic swine since 1996, and had its most recent outbreak in 2010. It is worth noting, in this regard, that APHIS considers any country that we have not evaluated for CSF as having a status equivalent to that of a CSF-affected country.

The risk analysis for Estonia considers the occurrence of CSF in Russia to be a potential risk factor for the introduction of CSF into that country. However, no region in Russia that borders Estonia has reported a CSF outbreak since 2000, and adequate control measures appear to be in place to prevent the possible spread of the disease to Estonia. Therefore, the analysis concludes that the Russian regions adjacent to Estonia do not appear to pose a high risk as potential sources of CSF introduction.

Hungary shares borders with seven countries. Of these, four are EU Member States: Austria, Slovakia, Romania, and Slovenia. The remaining three—Croatia, Serbia and Montenegro, and Ukraine—are EC-designated "third countries," *i.e.,* countries that are approved by the EC to export certain live animals and animal products to EU Member States because they meet certain animal health standards that are at least equivalent to those required of EU Member States. None of these three countries, however, is approved to export live swine, swine semen, pork, or pork products to the EU at this time.

APHIS considers Austria to be a low-risk region for CSF. CSF has been enzootic, or persistently present, within Romania for the last few years, although it currently appears to be under control. Hungary continues to implement enhanced checks for forbidden pork products from Romania in passenger baggage at and near the Hungary/Romania border. The CSF disease histories of Slovakia and Slovenia are discussed earlier in this document.

APHIS has not evaluated Croatia, Serbia and Montenegro, or Ukraine for their CSF status. Between July 2006 and April 2008, Croatia reported a series of outbreaks in its domestic swine population—129 occurrences in total, over 11 counties—with several occurring between 20 and 50 kilometers (approximately 12.4 to 31 miles) from

[3] To view this rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0106.*

the Hungarian border. In addition, according to the OIE, Serbia and Montenegro was known to have had widespread CSF in its domestic swine population as recently as 2005. Subsequently, Serbia and Montenegro implemented vaccination in the domestic swine population in order to control the outbreak. No evidence exists, however, to suggest that CSF has been eradicated in the country; in fact, there was a limited outbreak in domestic swine as recently as 2010. Finally, Ukraine reported its last CSF outbreak in 2001. In response to the outbreak, Ukraine undertook several disease control measures, including a quarantine of the area, depopulation of weak or sick animals, and vaccination of all domestic swine within a 3 kilometer (approximately 1.86 mile) radius.

Because five of the seven countries adjacent to Hungary have had recent CSF outbreaks, the risk analysis for that country considers these countries to be potential sources of infection of CSF. The analysis notes that Hungary has surveillance measures in place to detect CSF in its wild boar population and, because of the harmonized control measures that Hungary adopted at the time of its accession into the EU, the analysis considers the risk of CSF in its wild boar to be sufficiently mitigated.

Slovakia is bordered by Austria to the west, the Czech Republic to the northwest, Poland to the northeast, Ukraine to the east, and Hungary to the south. APHIS considers Austria, the Czech Republic, and Poland to be low-risk regions for CSF.

The analysis concludes that CSF could be introduced into domestic swine in Slovakia from a neighboring country, but that EC control measures serve to limit this risk, and that, accordingly, the risk is less immediate than that posed by native infected boar.

Slovenia is bordered by Austria to the north, Italy to the west, Hungary to the upper northeast, and Croatia to the south and lower northeast. APHIS considers Austria and Italy to be low risk regions for CSF. Croatia has experienced recent outbreaks of CSF.[4] The CSF disease history of Hungary is discussed earlier in this document.

The risk analysis considers the occurrence of CSF in Croatia to present a potential risk factor for the introduction of CSF into Slovenia. However, APHIS recognizes that Slovenia, in response to outbreaks within Croatia, strengthened its CSF surveillance along the Croatian border, and considers this a reasonable risk mitigation.

SVD: With regard to the SVD status of countries bordering Estonia, neither Latvia nor Russia has ever reported an outbreak of SVD. With regard to the status of those countries bordering Slovakia and Slovenia, APHIS considers Austria, the Czech Republic, Hungary, and Poland to be free of SVD. APHIS considers certain regions of Italy to be affected with SVD, and has not evaluated either Croatia or Ukraine for their SVD status. The risk analyses conclude that the regions adjacent to Estonia, Slovakia, and Slovenia appear to pose a low risk as potential sources of SVD introduction into these three countries.

FMD: With regard to the FMD status of countries bordering Slovakia and Slovenia, APHIS considers Austria, the Czech Republic, Hungary, Italy, and Poland to be free of FMD, but has not evaluated Croatia or Ukraine for their FMD status. The risk analysis concludes that the risk of introduction of FMD into Slovakia or Slovenia from neighboring countries is low, and mitigated by movement controls and border veterinary inspection.

Rinderpest: APHIS considers Austria, the Czech Republic, Hungary, Italy and Poland to be free of rinderpest, but has not evaluated Croatia or the Ukraine for their rinderpest status.

Degree of Separation From Adjacent Regions

Estonia is separated from most nearby regions by large bodies of water. It is bordered to the southwest by the Gulf of Riga, to the west by the Baltic Sea, to the north by the Gulf of Finland, and to the east by Lake Peipus, Lake Pskov, and the Narva River. Estonia shares land borders with only two countries: Latvia to the south, and Russia to the east. As mentioned above, APHIS considers Latvia to be a low risk for CSF, and Latvia has never reported an occurrence of SVD. There have been multiple outbreaks of CSF in Russia in recent years; however, there has not been an outbreak in the two administrative regions that border Estonia since 2000. Thus, land regions immediately adjacent to Estonia do not appear to pose a high risk for CSF and SVD.

There are few natural barriers to animal or human movement along the majority of Hungary's borders. The most significant natural barrier is the Danube River, which constitutes a portion of the border with Slovakia. Nonetheless, the analysis considers the risk of introduction of CSF into Hungary to be partially mitigated by border veterinary inspection and ongoing disease surveillance efforts, which are concentrated on border counties.

There are few natural barriers to the introduction of CSF, FMD, SVD, or rinderpest via animal or human movement along the border between Slovakia and neighboring countries. As noted above, the Danube River forms part of the border between Slovakia and Hungary; it also runs along a portion of the Austro-Slovakian border. The Carpathian Mountains lie to the north, but are not high enough to substantially limit animal movement. Animals in neighboring countries that could serve as reservoirs for CSF, SVD, FMD, and rinderpest—deer, chamois, bison, and wild boar—tend to be nonmigratory, and all bordering countries except Ukraine are considered by APHIS to be free of FMD, SVD, and rinderpest. Accordingly, the analysis concludes that CSF, SVD, FMD, or rinderpest could be introduced into Slovakia through animal movement, but that the risk of such introduction is very low with regard to FMD, SVD, or rinderpest. There is a slightly greater risk of CSF introduction into Slovakia, since wild boars are the primary reservoir of the disease and may enter Slovakia from neighboring countries. Nonetheless, the risk of CSF introduction is still low, based on the risk-mitigation measures Slovakia has in place, including wildlife surveillance.

Slovenia is bordered by the countries of Austria, Italy, Hungary, and Croatia. The Adriatic Sea is on its southwestern border. The Julian Alps provide a natural barrier between Slovenia and Austria, and substantially limit animal movement at their highest points. The Alps also separate Slovenia from Italy, but are more passable along this border, particularly since their incline drops as they approach the Adriatic Sea. Slovenia is separated from Croatia and Hungary by a State border alone. Effective movement controls, border veterinary inspection, and enhanced disease surveillance in border regions mitigate the risk of introduction of disease from these two countries.

Extent of an Active Disease Control Program

Due to the absence of CSF and SVD outbreaks in recent years, there are no CSF and SVD control programs currently active in Estonia.

In response to the detection of CSF in wild boar along the border with Slovakia, Hungary has exercised disease control measures within the infected area. As pertains to the wild boar population, Hungary has implemented hunting restrictions and mandatory veterinary inspections for any boar shot

[4] An evaluation of the disease status of Croatia with regard to CSF has been initiated.

or found dead within an affected county. As pertains to the domestic swine population, Hungary has implemented a census of all swine on premises within the quarantined area, standard procedures for cleaning and disinfection, and enhanced reporting requirements for swine exhibiting clinical signs of CSF infection.

Shortly before Slovakia's accession to the EU, the EC recognized that CSF was endemic in the wild boar population in a certain area of the country, and thus designated the area a restricted area. Accordingly, the EC imposed movement restrictions on swine and swine products from the area, and required Slovakia to undertake an eradication-based CSF vaccination program for wild boar within the area. Slovakia does not have active disease control programs for SVD, FMD, or rinderpest, as none of these diseases have been reported in the country in many years.

Control measures for CSF in Slovenia include active systematic monitoring, veterinary inspection, movement certificates, field investigations, and laboratory investigations. Due to the prolonged absence of SVD, FMD, and rinderpest in Slovenia, Slovenia does not have aggressive active disease surveillance programs for these diseases, but maintains interlocking safeguards in order to prevent, detect, and suppress them. These safeguards include veterinary certificates, standard procedures for cleaning and disinfection, training of veterinarians, veterinary technicians, and animal owners, indemnity and compensation for diseased animals, and incentives for compliance with animal health regulations.

Vaccination

General preventive vaccination against CSF and SVD is prohibited in Estonia; emergency vaccinations for CSF are permitted only under exceptional circumstances to prevent the spread of the disease in the event of an outbreak, and only if sanctioned by the EC.

Routine vaccination for CSF has been prohibited within Hungary since 1974. As noted above, the current outbreak of CSF in the wild boar population within the country is being managed through hunting restrictions, population control, and surveillance efforts.

Routine vaccination of domestic swine against CSF and SVD is currently prohibited in Slovakia, as is vaccination of any animal for FMD, although FMD vaccinations may be implemented in the event of an outbreak. As noted above, however, there is CSF vaccination of wild boar in the EC-designated restricted area within the country. Moreover, since the last vaccination of domestic swine for CSF occurred in 2000, there is some potential of detecting vaccine titers during CSF slaughter surveillance. Finally, FMD vaccinations may be implemented in the event of an outbreak.

The last vaccination against CSF occurred in Slovenia in 2000; however, Slovenia has the authority to implement emergency vaccinations in the event of a CSF outbreak. SVD vaccination is prohibited. FMD vaccinations, although currently prohibited, may be implemented in the event of an outbreak.

Movement Control From Higher Risk Regions

Some forms of CSF, SVD, and FMD are difficult to detect in live animals or in post-mortem examinations without laboratory testing, and, in some instances, detection may be delayed due to deficiencies in active surveillance or diagnostic testing capabilities. Any such delay in detection of an outbreak could increase the risk that infected animals or animal products are exported to the United States. Consequently, the risk analyses analyze potential pathways for disease introduction into Estonia, Hungary, Slovakia, and Slovenia, such as importation and intra-Community trade in live animals and animal products, vehicular and human traffic, and commodities for human consumption.

Import Controls: Importations must occur at specified road, rail, air, and/or sea ports through a border inspection post (BIP) approved by the EC; inspections and veterinary checks occur at such BIPs. The EC conducts a rigorous inspection of each BIP prior to approval and carries out regular audits to monitor the efficacy of sanitary controls. APHIS considers EC-approved BIPs to be capable of performing appropriate inspections and veterinary checks on animals and animal products; this was corroborated by several site visits to Slovakian and Hungarian BIPs in November 2004 and by visits to two BIPs in Estonia in November 2005. Although the site visit to Slovenia did not include a visit to a BIP, Slovenia provided APHIS with information certifying that each Slovenian BIP is approved by the EC.

Swine, ruminants, and derived products such as meat, meat products, and genetic material are harmonized commodities under EC legislation, which means that the restrictions on imports from non-EU countries are generally standardized across all EU Member States. Binding EC legislation lists the non-EU countries, and establishments within those countries, that are approved for export of certain commodities to the EU. Slaughterhouses, cutting plants, semen collection centers, and other exporting establishments are subject to inspection prior to approval. Veterinary certificates required for export to the EU outline comprehensive animal health and testing requirements and must be endorsed by an official veterinarian of the exporting country.

At the time the analyses were conducted, four non-EU countries were authorized to export both live swine and fresh pork products to EU Member Countries: Chile, New Zealand, Norway, and Switzerland. Three additional countries (Australia, Canada, and the United States) were authorized to export fresh pork products alone, and one (Iceland) was authorized to export live swine, but not pork products. The United States is free of SVD, CSF, and FMD. APHIS recognizes all seven other countries to be free of SVD (although some are subject to the restrictions specified in § 94.13), and all but Switzerland to be free of CSF.[5] APHIS also considers these countries to be free of FMD, although some are subject to the restrictions specified in § 94.11.

However, although the importation of swine and pork products into Estonia, Hungary, Slovakia, and Slovenia is currently limited to these eight countries, and although the import practices of Estonia, Hungary, Slovakia, and Slovenia have proven generally effective with regard to CSF, SVD, or FMD, EC legislation allows EU Member States to import fresh pork and pork products derived from swine from several regions that APHIS has not evaluated and therefore regards as having the same status as regions affected with these diseases. Moreover, EU Member States may also import bovine embryos and meat and meat products from both domestic and wild ruminants from regions that APHIS considers affected with FMD.

Veterinary inspectors at the entry BIPs check that the documentation accompanying commodities is in order, including appropriate health certificates and other movement control documents, and that the shipment is properly identified and the identification matches the documentation. Veterinary inspectors also conduct physical examinations of incoming shipments in accordance with EC legislation. However, because CSF, SVD, and FMD testing is generally not required at the BIPs, the mandated inspections would

[5] An evaluation of the disease status of Switzerland with regard to CSF has been initiated.

not usually detect subclinical infection. The causal agents of CSF, SVD, and FMD could also remain viable through carcass maturation, transport, and storage, and could be present in genetic material.

Accordingly, the risk evaluations determined that there is some risk of CSF, SVD, and/or FMD introduction into Estonia, Hungary, Slovakia, and Slovenia through the importation of commodities from non-EU Member States. However, the evaluations also found that this risk is substantially mitigated by EC certification requirements for meat, meat products, and genetic material, such as veterinary inspection of live animals prior to shipment, restrictions on the sources (countries, regions, premises, or production facilities) from which trade is permitted, certification of disease status by an official veterinarian, veterinary inspection at BIPs, and requirements for processing meant to inactivate viral disease agents.

Trade Controls: As EU Member States, Estonia, Hungary, Slovakia, and Slovenia may engage in intra-Community trade with other Member States as governed by EC legislation that was transposed into national legislation prior to accession. Live animals and animal products must originate from a holding center or organization (*e.g.,* market or assembly center) that is under State veterinary control, *i.e.,* that has regular veterinary checks. The animals must be appropriately identified, must be accompanied by an appropriate health certificate signed by an official veterinarian of the country of origin, and must be segregated according to destination, if destined for shipment to multiple locations. Intra-Community trade in swine and swine products, including semen and embryos, from CSF- or SVD-affected regions of EU Member States is prohibited, and States with such regions must adhere to animal health control measures meant to control the spread of these diseases in order to engage in trade with other Member States. Because FMD is not known to be present in the EU, there are no current trade restrictions based on FMD; however, EC legislation authorizes the imposition of such restrictions in the event of an outbreak.

Establishments such as slaughterhouses, processing plants, milk processing plants, and semen collection centers must be approved by the Member State in which they reside according to criteria similar to those for exporting establishments in non-EU countries. The EC and official veterinary services of the Member State conduct periodic audits to monitor compliance with approval criteria and certification requirements.

The risk analyses conclude that there is some risk of CSF, SVD and/or FMD and rinderpest being introduced into Estonia, Hungary, Slovakia, and Slovenia from other EU Member States, but this risk is low, based on the absence of FMD in the EU and the mitigation measures for CSF and SVD imposed through EC and transposed national legislation.

Veterinary Control of Passenger Traffic: Estonia shares a land border with only one non-EU country, Russia. Customs officials, rather than veterinary officers, control the majority of border crossings. Cars and buses are subject to inspections and random luggage checks; not all buses or pieces of luggage, therefore, are inspected. Cleaning and disinfection procedures are enforced for all transport vehicles carrying live animals; disinfection barriers also exist for vehicles and pedestrians at each BIP and point of entry.

Informational posters are hung at border crossing points, press releases are distributed, and information is disseminated to customs officers and customs clients to publicize regulations regarding prohibitions and restrictions on personal imports of meat. During visits by APHIS to two Estonian BIPs in 2005, APHIS found that prohibited food items were not often found in the luggage of individuals entering Estonia. However, at one of these BIPs, there was a high volume of road traffic from Estonia into Russia due to the comparatively low price of basic commodities in Russia.

In Hungary, BIP veterinary staff, employed by the county Agricultural Offices but under the direct supervisory and administrative responsibility of the central Ministry of Agriculture and Rural Development office in Budapest, oversee the operations of each BIP. These inspectors conduct searches, may seize prohibited goods, segregate live animals through a separate point of entry, and enforce cleaning and disinfection procedures.

There is, however, significant movement of passengers who do not pass through these BIPs from countries that are not part of the EU. The Hungarian Frontier Guard, which controls the frontier borders of Hungary, conducts random checks and other control activities at these points of entry in conjunction with customs officials. During our site visits, both the Frontier Guards and customs officials appeared familiar with EU requirements and prohibitions regarding importation of meat and dairy products transported in personal consignments.

In addition, while informational posters informing travelers of prohibitions on the importation of certain meat and dairy products were reported to be present at BIPs and other border crossings at the time of accession, APHIS found no such posters during our site visit.

The State Veterinary and Food Administration controls all border crossing points in Slovakia, including all BIPs. There are, however, several crossings for passenger traffic that do not have official veterinary inspection. All individuals attempting to enter the country with agricultural products are redirected to a BIP with veterinary inspection. Customs officials visually check all passenger luggage at BIPs on the Ukrainian border, and selected passenger luggage at Slovakia's airport BIP. Moreover, during our site visit, APHIS noticed wall notices informing travelers of prohibitions on the importation of certain meat and dairy products were present in many, but not all, BIPs.

The Veterinary Administration of the Republic of Slovenia (VARS) includes both an Internal Veterinary Inspection Sector (10 regional offices and 2 branch offices) and the Border Veterinary Inspection Service (BVIS). The annual disease control program issued by VARS outlines the frequency and location of inspections for the Regional Offices to undertake within Slovenia itself. The BVIS has administrative and supervisory responsibility for the 6 BIPs in Slovenia. BVIS veterinary inspectors are present at the BIPs during working hours, but do not conduct inspections outside normal working hours without prior notice.

Slovenian road border crossings are also staffed by customs officials from the Customs Administration of the Republic of Slovenia (CARS). Customs officials conduct searches of personal luggage at border crossings for prohibited meat and dairy products. The customs officials are not themselves veterinarians, but work in close coordination with the veterinary inspectors of VARS: VARS inspectors conduct their training and meet with them monthly to discuss areas for improvement. CARS produces posters, brochures, and Web site information to promote awareness of prohibitions on the importation of meat and other animal products.

Accordingly, the analyses conclude that there is a risk of introduction of CSF, FMD, SVD, or rinderpest into Slovakia or Slovenia, CSF or SVD into Estonia, and CSF into Hungary via passenger traffic, but that this risk is significantly mitigated by the control

measures in place at points of entry to the countries.

Livestock Demographics

As stated above, Estonia, Hungary, Slovakia, and Slovenia adopted EC legislation with regard to animal identification at the time of their accession. Each country has in place herd registration and animal identification requirements for ruminants and swine that include movement tracking through a centralized database or register. Health certificates and/or movement authorization certificates are required for all internal movements of ruminants and swine. We will discuss livestock demographics for swine first, then discuss demographics for ruminants, as warranted.

Between 2002 and 2004, the total number of swine holdings in Estonia was approximately 3,835. However, 30 large-scale confinement facilities, each with holdings of at least 2,000 swine, account for the majority of all swine production in the country. Outdoor production facilities are rare, although some small backyard farms do keep swine outdoors in the summer months.

In 2007, the domestic swine population in Hungary was 3.3 million. Approximately 70 percent of all pigs slaughtered in any given year, as well as the majority of pigs destined for commercial export, originate from large-scale facilities of more than 100 pigs. However, it was once common for Hungarians to raise swine for personal consumption, and, although such small-scale farms have declined greatly in number in recent years, they still are more numerous than the large-scale facilities within the country.

In 2006, there were 921,723 pigs on 6,806 holdings in Slovakia. The majority of holdings have between 1 and 450 pigs, although there are several large commercial confinement facilities of 7,000 to 10,000 pigs in the eastern and southwestern parts of the country.

In Slovenia, there were approximately 26,000 swine holdings and 608,000 pigs in 2004. Eight large-scale confinement facilities, each with between 500 and 5,700 sows, account for half of commercial pig production.

In all four countries, there is some overlap between the distribution of swine holdings and areas of concentration of wild boars; however, the majority of swine in Estonia, Hungary, and Slovenia are housed in confinement facilities, with minimal to no outdoor access, and are moved only for slaughter or export. This is not the case with Slovakia, where small to medium holdings constitute the majority of the industry; however, many of these facilities either do not move swine or move them only for custom slaughter for personal consumption.

As part of our evaluations, APHIS conducted site visits of production facilities in Hungary and Slovakia and a rendering plant in Estonia, and determined that they adhered to State-mandated biosecurity measures that are adequate to prevent wild animal incursions into the facilities and the spread of communicable swine diseases by other routes. The risk analyses for Estonia, Hungary, and Slovenia therefore conclude that the prevalence of large commercial confinement facilities in these countries, the distribution of the wild boar population in each country in relation to these facilities, mandatory animal identification requirements, movement controls, and other biosecurity measures adequately mitigate the export risk to the United States. The risk analysis for Slovakia finds that the risk posed by the prevalence of smaller, outdoor production facilities is often mitigated by the lack of movement of swine from the facilities, or their movement only for custom slaughter.

In 2006, there were 524,247 cattle on 19,904 holdings, 326,322 sheep on 4,949 holdings, and 5,507 goats on 918 holdings in Slovakia. Ruminant holdings tend to be constructed in a manner that allows the animals space to graze, and rely on biosecurity measures, such as perimeter fencing and cleaning and disinfection techniques, that minimize but do not prevent contact with wildlife or disease introduction. That said, Slovakia has in place movement restrictions, isolation parameters, and assembly center requirements that APHIS considers sufficient to mitigate the risk that meat derived from FMD-infected ruminants could be exported to the United States.

Cattle are distributed throughout Slovenia, primarily on small- to medium-sized family farms. Family farms frequently maintain cattle for dairy production or breeding. There are large commercial breeding operations (of approximately 600 head apiece) in Slovenia, but most large commercial operations specialize in fattening and meat production. The majority of cattle or products from cattle that are exported from Slovenia originate from cattle held on large-scale commercial operations.

In 2006, there were 144,000 sheep and goats in Slovenia, on 8,600 sheep and goat holdings. As for cattle and swine, Slovenia has in place mandatory animal identification and registration for sheep and goats, which facilitates traceability. In addition, APHIS' regulations governing bovine spongiform encephalopathy currently prohibit the importation of ruminant-derived products from Slovenia. These safeguards address the risk of FMD being introduced into the United States through the importation of ruminant-derived products from Slovenia.

Disease Surveillance

CSF: Estonia, Hungary, Slovakia, and Slovenia all have national surveillance programs in place for CSF in domestic swine and wild boar. Active surveillance is primarily based on serology for antibodies to the CSF virus, as is common throughout the world. Since antibodies usually occur late in CSF infection, serological surveillance would likely miss an early infection (*e.g.,* in the first 21 days). In each country, training, the distribution of informational literature, and national surveillance exercises aid in passive surveillance for CSF by developing and maintaining the ability to quickly detect this disease. APHIS considers passive surveillance to be sufficient to detect overt clinical signs of CSF, but detection may be delayed in the case of moderate- or low-virulence strains.

SVD: Estonia conducts serological surveillance for SVD in domestic swine. Slovakia does not conduct active surveillance for SVD, but instead relies on passive surveillance similar to that employed to detect CSF. Due to the absence of SVD in the country, Slovenia relies primarily on passive surveillance strategies. Consequently, detection of SVD in Slovakia or Slovenia may be delayed in some instances based on the absence of overt clinical signs.

FMD: Slovakia and Slovenia conduct passive surveillance for FMD. As noted above, passive surveillance may delay the detection of the disease in some instances based on the absence of clinical signs of infection.

Diagnostic Capabilities

Estonia, Hungary, Slovakia, and Slovenia have established accredited national reference laboratories (NRLs) for animal diseases, including CSF, SVD, and FMD. In Slovenia, the National Veterinary Institute (NVI) at the University of Ljubljana is the NRL for a number of diseases, although there are nine regional laboratories that perform initial diagnostic and screening tests. Overall, the laboratories are well organized and equipped, with experienced scientific and technical staff. Standard operating procedures and quality control measures are in place throughout.

CSF: In each country, the NRL provides a range of tests for the

diagnosis and confirmation of CSF. Testing includes the virus isolation and antigen enzyme-linked immunosorbent assay (ELISA) tests, as well as the nested polymerase chain reaction, immunofluorescence, and immunoperoxidase methods.

During APHIS' site visit to the NRL in Hungary, we had some concerns regarding the lack of sensitivity of one of the assays employed, a fluorescent antibody test for wild boars. In response, Hungary implemented more sensitive assays that are consistent with OIE specifications. Moreover, APHIS notes that Slovenia's NVI Biohazard Level 3 containment center is not yet completed. Because the NVI cannot handle live CSF virus until this is constructed, it cannot perform all CSF diagnostic tests, and thus it has not yet been accredited by VARS and the EU. (Similar restrictions apply to FMD testing.) Finally, the NRLs of both Estonia and Slovenia rely in certain instances on corroborative testing that takes place outside of each country.

We do not believe that any of these issues decisively compromises the ability of Estonia, Hungary, or Slovenia to detect CSF in samples from domestic swine and wild boars in a timely manner; we have determined that, in each instance, other factors mitigate the risk associated with the issue of concern; and we have therefore concluded that the laboratory systems of Estonia, Hungary, Slovakia, and Slovenia, on the whole, have adequate diagnostic capabilities for CSF.

SVD: The NRL of Estonia currently conducts both serological and nucleic acid testing for SVD. Slovakia does not employ active surveillance for SVD, hence there is no required testing for the disease. However, the NRL of Slovakia does provide a partial range of diagnostic tests for the detection of SVD, as such testing is requested. The NRL of Slovenia has historically conducted limited ELISA testing for SVD: In 2004, there were 30 samples tested, each of which tested negative for SVD, while there were no samples tested in either 2005 or 2006. A monitoring program was designed for 2008. The NRL can, however, process up to 500 samples by ELISA each day.

FMD: The NRLs of Slovakia and Slovenia are capable of performing ELISA tests for FMD antigens. However, because the NRL of Slovakia cannot perform virus isolation tests, confirmatory testing is currently conducted in Riems, Germany. Similarly, because the NRL of Slovenia lacked accreditation for handling live FMD virus at the time of our analysis, samples were being sent instead to Pirbright, United Kingdom, for virological testing. Should either of these procedures continue, they could result in a slight delay in confirming an outbreak in the two countries.

Emergency Response Capacity

Estonia, Hungary, Slovakia, and Slovenia all have contingency plans in place and supporting legislation to control and eradicate CSF outbreaks in domestic swine. In addition, Estonia has in place a contingency plan to control and eradicate SVD; Slovakia, SVD and FMD; and Slovenia, FMD. These contingency plans conform closely to the provisions of EC legislation. The EC has a stamping out policy with regard to CSF, SVD, and FMD. Eradication is carried out by compulsory depopulation of all animals on the affected premises with burial or incineration of the carcasses, as well as certain cleaning and disinfection protocols. All live animals, animal products, and genetic material moved from affected premises during the time between disease introduction and detection of the outbreak must be destroyed. Additionally, surveillance zones of at least a 10-kilometer radius from the affected premises are established, and the movement of live animals, animal products, and genetic material is suspended until the restrictions are lifted.

While Slovenia currently has no contingency plan for the control and eradication of SVD, the disease has never been reported to have occurred in that country. Furthermore, APHIS recognizes Slovenia's thorough contingency plans for CSF and FMD. In particular, the FMD contingency plan encourages the detection and reporting of vesicular diseases that could lead to an SVD diagnosis.

Release Assessment Conclusions

APHIS found no evidence to suggest CSF or SVD exists within Estonia. Moreover, we determined that there are measures or factors in place which mitigate the pathways through which these diseases could be introduced into Estonia: Migration of wild boar, trade of swine and swine products, vehicle and human traffic, and importation of swine products for personal consumption. APHIS concludes that the risk of introduction of these diseases into Estonia is therefore low. Moreover, APHIS concludes that the risk of introduction of CSF or SVD into the United States from products imported from Estonia is mitigated by additional import restrictions already specified in the regulations.

APHIS found that CSF exists in the wild boar population living within Hungary, as evidenced by a 2009 outbreak of CSF in wild boar. Moreover, APHIS has determined that, even if CSF were eradicated in wild boar within the country, there is a risk of reintroduction of the disease because the wild boar populations in neighboring countries are known to be affected with CSF. However, as noted earlier, APHIS does not consider the presence of CSF in wild boar within a country grounds for precluding that region's inclusion in the APHIS-defined EU CSF low-risk region. Moreover, APHIS has determined that swine operations within Hungary, especially larger commercial ones, adhere to biosecurity measures intended to preclude the introduction of CSF into their holdings.

Upon being added to the EU CSF region, Hungary would be subject to the requirement, under the existing regulations in § 94.24, that its veterinary authorities certify that live swine and swine products exported to the United States did not originate from the restricted zone in Hungary and have never been commingled with swine or swine products from that area. We consider this requirement, in conjunction with the risk mitigation measures imposed by Hungary and the EC, sufficient to mitigate the CSF risk associated with the importation of pork and pork products from Hungary.

APHIS found that CSF exists within Slovakia in wild boar in the EC-designated eradication zone. While surveillance and vaccination within this area have reduced the incidence of CSF in recent years, there is a clear risk of disease introduction to domestic swine via contact with such boars, although the risk of exposure to infected boars is substantially mitigated by commercial production and biosecurity practices on swine confinement operations. Exposure to wild boar is more likely on small farms without such measures; however, such farms often raise pigs only for personal consumption.

Upon being added to the EU CSF region, Slovakia would be subject to the requirement, under the existing regulations in § 94.24, that its veterinary authorities certify that live swine and swine products imported into the United States did not originate from the CSF-restricted zone in Slovakia, and have never been commingled with swine or swine products from that area. We consider this requirement, in conjunction with the risk mitigation measures imposed by Slovakia and the EC, sufficient to mitigate the CSF risk associated with the importation of pork and pork products from Slovakia.

APHIS has no evidence that SVD, FMD, or rinderpest currently exists in Slovakia. The most likely sources of introduction of these two diseases into Slovakia are migration of wild boar or smuggled agricultural products. Slovakia has adequate mitigation measures in place to detect the smuggling of agricultural products. It is possible that infected wild boar could enter Slovakia and come in contact with domestic swine; this risk is somewhat mitigated, but not altogether removed, by the biosecurity measures of commercial confinement facilities within Slovakia. However, the introduction of SVD, FMD, or rinderpest into the domestic herd in Slovakia would only pose a risk of disease introduction into the United States if diseased swine or animal products derived from diseased swine were not detected prior to export. APHIS regards the risk of this occurring to be low.

APHIS found no evidence to suggest that CSF, SVD, FMD, or rinderpest exists in Slovenia. The most likely source of introduction of CSF, SVD or FMD into Slovenia is wild boar from neighboring countries affected with the diseases. However, the introduction of these diseases into Slovenia's domestic herd would only pose a risk of disease introduction into the United States if diseased swine or animal products derived from diseased swine were not detected prior to export. APHIS regards the risk of this occurring to be low. Furthermore, should these diseases be introduced, APHIS has evaluated EC control measures and found them efficacious in detecting and controlling outbreaks of CSF, SVD, and FMD in domestic livestock.

As a result of our analyses, we have concluded that the risk profiles for Estonia, Hungary, Slovakia, and Slovenia are equivalent in CSF risk to the APHIS-defined EU CSF region. The region is defined in §§ 93.500, 94.0, and 98.30, and is recognized as a single region of low-risk for CSF in §§ 94.9 and 94.10. The region is subject to the import restrictions specified in § 94.24 for live swine, pork, and pork products, and § 98.38 for swine semen. Therefore, we are proposing to amend the definition of the APHIS-defined EU CSF region §§ 93.500, 94.0, and 98.30 in order to include Estonia, Hungary, Slovakia, and Slovenia in the region, and, accordingly, to allow the importation of live swine, swine semen, pork, and pork products into the United States from these four countries under the restrictions listed in the regulations.

We are proposing to recognize Estonia, Slovakia, and Slovenia as free of SVD, and Slovakia and Slovenia as free of FMD and rinderpest. In addition to proposing to include Estonia, Slovakia, and Slovenia in the list in § 94.12(a) of regions declared free of SVD, and Slovakia and Slovenia to the list in § 94.1(a)(2) of regions declared free of both rinderpest and FMD, we are also proposing to add Estonia, Slovakia, and Slovenia to the list in § 94.13 of regions declared free of SVD whose exports of pork and pork products are also subject to restrictions and to add Slovakia and Slovenia to the list in § 94.11(a) of regions declared free of rinderpest and FMD whose exports of meat and other animal products to the United States are nevertheless subject to certain restrictions.

Risk Mitigation Measures for the Importation of Swine Semen From the APHIS-Defined EU CSF Region and the 40-Day Post-Collection Holding Period

Currently, the requirements for the importation of swine semen from the APHIS-defined EU CSF region, which are found in paragraphs (a) through (i) of § 98.38, provide, among other things, that semen must come from an approved semen collection center, that it must come from a donor boar that has never been in or transited a region where CSF is known to exist or a restricted zone for CSF, that it must come from a donor boar that has never commingled with swine that have been in such regions or zones, that the donor boar must be held in isolation for 30 days prior to semen collection, and that the boar must be tested for CSF prior to being held in isolation with negative results. In addition, paragraph (h) of the section currently requires that, except for semen collected from swine in Denmark, Finland, Sweden, the Republic of Ireland, and the United Kingdom, before the semen is exported to the United States, the donor boar must be held at the semen collection center for at least 40 days following collection of the semen, and, along with all other swine at the semen collection center, exhibit no clinical signs of CSF.

After reviewing relevant information, we are proposing to remove paragraph (h) from the regulations.

Three considerations, which are documented in a risk assessment titled "APHIS Risk Considerations on the Necessity of the 40-Day Post-Collection Holding Period for Swine Semen Imported from the European Union" (June 2008) that accompanies this proposed rule, led us to this conclusion. First, in recognizing the APHIS-defined EU CSF region, we decided that EC quarantine regulations with respect to areas affected by CSF would form the basis for the additional restrictions or mitigation measures that we would impose upon imports of swine and swine products from that region. We will only impose additional restrictions in circumstances where we have determined that, in the absence of such restrictions, EC regulations would prove insufficient to adequately mitigate the risk of CSF being introduced into the United States by such animals and animal products. In other words, the restrictions that our regulations impose upon the EU CSF region are dependent on the restrictions in the EC regulations themselves; as the latter become more or less restrictive, our regulations should change accordingly.

Since we recognized the EU CSF region, significant changes have been made to the EC regulations to strengthen its controls for CSF introduction or dissemination via infected swine germplasm. These include additional controls on the intra-community trade of swine semen, the immediate halt of the movement of swine semen from collection centers within all restricted zones established during an outbreak of CSF, and additional testing requirements for all animals in swine semen centers prior to releasing an area from restrictions following an outbreak.

Second, since we conducted the 1999 risk analysis that suggested the need for the 40-day holding period, we have strengthened our regulations governing the importation of swine semen from a CSF-affected area within the EU CSF region and added additional mitigation measures for products imported from that region. For example, we have since added a 6-month restriction on the importation into the United States of swine and swine products from a restricted zone within the EU CSF region following an outbreak.

Finally, at the time we put the 40-day holding period in place, we believed that it would not be overly burdensome for exporters of swine semen or otherwise inhibit trade. However, we have since learned that artificial insemination of sows relies overwhelmingly on fresh boar semen or semen that has been chilled for no more than 5 days; indeed, such semen accounts for approximately 99 percent of all artificial insemination worldwide. Methods, such as freezing, exist to preserve swine semen for longer periods of time; however, swine semen is extremely sensitive to freezing and thawing, losing both potency and fertility in the process. Given the other increased restrictions on the importation of swine semen from the EU CSF region, continuing to require the 40-day hold, and thus to interfere with trade in swine semen, no longer appears

necessary. Accordingly, we are proposing to remove § 98.38(h), which requires the 40-day hold, from the regulations.

Administrative Units

On October 28, 1997, we published in the **Federal Register** a final rule (62 FR 56000–56026, Docket No. 94–106–9) and a policy statement (62 FR 56027–56033, Docket No. 941068) that established procedures for recognizing regions and levels of risk for the purpose of regulating the importation of animals and animal products. With the establishment of those procedures, APHIS can consider requests to allow importations from regions based on levels of risk, as well as to recognize entire countries as free of a disease. In subsequent rules, we identified the smallest administrative jurisdictions, referred to as administrative units (AUs), in the APHIS-defined EU CSF region that we would use to regionalize those Member States in the event of future animal disease outbreaks. As discussed in those documents, we believe that each of those jurisdictions is the smallest that can be demonstrated to have oversight of normal animal movements into, out of, and within that Member State, and that, in association with national authorities, if necessary, has effective control over animal movements and animal diseases locally.

We have identified the following AUs for each country addressed in this proposal: For both Estonia and Hungary, the AU would be the county; for Slovakia, the district; and for Slovenia, the region.

We have also reevaluated the AUs that we currently recognize for other countries in the EU to determine whether any modifications to these recognitions were necessary. Prior to July 29, 2005, the AU for Italy was the region. In a notice that we published in the **Federal Register** (70 FR 43838–43839, Docket No. 04–081–2) on that date, we advised the public that, among other things, we considered the aziende sanitarie locali (local health unit), a smaller administrative unit, the AU for Italy. Since that time, we have determined that this unit does not have sufficient control over local animal movements to fulfill the criteria established for an AU. Therefore, we intend to once again identify the region as the AU for Italy. We invite comments on that determination.

Accordingly, these AUs would be used to regionalize those Member States in the event of future animal disease outbreaks.

Executive Order 12866 and Regulatory Flexibility Act

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

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

The analysis identifies hog and pig producers as the small entities most likely to be affected by this action and considers the effects on domestic prices associated with increased imports of swine, swine semen, pork, and pork products. Based on the information presented in the analysis, we expect that domestic pork producers would experience only a minimal loss in welfare as a result of this action. The analysis provides a basis for the APHIS Administrator's determination that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed addition of Estonia, Hungary, Slovakia, and Slovenia to the list of EU countries considered to be a low risk CSF, Estonia, Slovakia, and Slovenia to the list of regions recognized as free of SVD, but that are subject to certain import restrictions, and Slovakia and Slovenia to the list of regions recognized as free of FMD and rinderpest, but that are subject to certain import restrictions, we have prepared environmental assessments for each country.

The environmental assessments were 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).

The environmental assessments may be viewed on the Regulations.gov Web site or in our reading room. We invite the public to comment on those environmental assessments. Comments on the environmental assessments may be submitted using the same process as comments on the proposed rule. Instructions for accessing Regulations.gov and for submitting comments and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed 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

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, we propose to amend 9 CFR parts 93, 94, and 98 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.500, the definition of *APHIS-defined EU CSF region* is revised to read as follows:

§ 93.500 Definitions.

* * * * *

APHIS-defined EU CSF region. The European Union Member States of Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

3. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

4. In § 94.0, the definition of *APHIS-defined EU CSF region* is revised to read as follows:

§ 94.0 Definitions.

* * * * *

APHIS-defined EU CSF region. The European Union Member States of Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

§ 94.1 [Amended]

5. In § 94.1, paragraph (a)(2) is amended by adding the words "Slovakia, Slovenia," immediately after the word "Portugal,".

§ 94.11 [Amended]

6. In § 94.11, paragraph (a) is amended by adding the words "Slovakia, Slovenia," immediately after the word "Portugal,".

7. In § 94.12, paragraph (a) is revised to read as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

(a) Swine vesicular disease is considered to exist in all regions of the world except Australia, Austria, the Bahamas, Belgium, Bulgaria, Canada, Central American countries, Chile, the Czech Republic, Denmark, Dominican Republic, Estonia, Fiji, Finland, France, Germany, Greece, Greenland, Haiti, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Trust Territories of the Pacific, the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland), Yugoslavia, and the Regions in Italy of Friuli, Liguria, Marche, and Valle d'Aosta.

* * * * *

8. In § 94.13 introductory text, the first sentence is revised to read as follows:

§ 94.13 Restrictions on importation of pork or pork products from specified regions.

Austria, the Bahamas, Belgium, Bulgaria, Chile, the Czech Republic, Denmark, Estonia, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Slovakia, Slovenia, Spain, Switzerland, the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland), Yugoslavia, and the Regions in Italy of Friuli, Liguria, Marche, and Valle d'Aosta are declared free of swine vesicular disease in § 94.12(a). * * *

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PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

9. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

10. In § 98.30, the definition of *APHIS-defined EU CSF region* is revised to read as follows:

§ 98.30 Definitions.

* * * * *

APHIS-defined EU CSF region. The European Union Member States of Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

§ 98.38 [Amended]

11. Section 98.38 is amended as follows:

a. In the introductory text, by removing the words ", except as noted in paragraph (h) of this section with regard to swine semen imported from Denmark, Finland, the Republic of Ireland, Sweden, or the United Kingdom".

b. By removing paragraph (h).

c. By redesignating paragraph (i) as paragraph (h).

d. In newly redesignated paragraph (h), by removing the words "through (h)" and adding the words "through (g)" in their place.

Done in Washington, DC, this 7th day of February 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1405]

RIN 7100–AD64

Definitions of "Predominantly Engaged in Financial Activities" and "Significant" Nonbank Financial Company and Bank Holding Company

AGENCY: Board of Governors of the Federal Reserve System ("Board").

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation Y that establish the criteria for determining whether a company is "predominantly engaged in financial activities" and define the terms "significant nonbank financial company" and "significant bank holding company" for purposes of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act" or "Act"). These terms are relevant to various provisions of Title I of the Dodd-Frank Act, including section 113, which authorizes the Financial Stability Oversight Council ("Council") to designate a nonbank financial company for supervision by the Board if the Council determines that the company could pose a threat to the financial stability of the United States. The Council recently requested comment on a proposed rule to implement section 113 of the Dodd-Frank Act.

DATES: *Comments:* Comments should be received on or before March 30, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1405 and

RIN No. 7100–AD64, by any of the following methods:

Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

Facsimile: (202) 452–3819 or (202) 452–3102.

Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Paige E. Pidano, Senior Attorney, (202) 452–2803 or Kieran J. Fallon, Associate General Counsel, (202) 452–5270, Legal Division; Margaret Donovan, Supervisory Financial Analyst, (202) 872–7542, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act, enacted on July 21, 2010, establishes the Council, which is composed of ten voting members and five non-voting members.[1] Among other authorities and duties, the Council may require that a "nonbank financial company" become subject to consolidated, prudential supervision by the Board if the Council determines that material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could pose a threat to the financial stability of the United States.[2] Section 113 of the Dodd-Frank Act specifies a number of criteria that the Council must consider in determining whether to designate a nonbank financial company for supervision by the Board. These factors include the size and leverage of the company, as well as the extent and nature of the company's transactions and relationships with other "significant nonbank financial companies" and "significant bank holding companies."[3] Nonbank financial companies that are designated by the Council under section 113 of the Dodd-Frank Act are referred to as "nonbank financial companies supervised by the Board."[4]

The authority of the Council to require that a nonbank financial company become subject to consolidated prudential supervision by the Board is an important component of the legislative and regulatory changes designed to address gaps and weaknesses in the financial regulatory system that became evident during the financial crisis. These gaps allowed certain large, interconnected financial firms whose failure could pose substantial risks to the financial stability of the United States to avoid the type of prudential, consolidated supervision applicable to bank holding companies.

Besides being used in section 113 of the Dodd-Frank Act, the terms "nonbank financial company" and "significant" nonbank financial company and bank holding company also are used in several other provisions of Title I of the Act. For example, under section 112(d)(3) of the Dodd-Frank Act (12 U.S.C 5322(d)(3)), the Council, acting through the Office of Financial Research ("OFR"), may require a nonbank financial company to submit reports to the OFR and the Council to assist the Council in assessing the extent to which a financial activity or financial market in which the nonbank financial company participates, or the nonbank financial company itself, poses a threat to the financial stability of the United States. In addition, the Dodd-Frank Act requires nonbank financial companies supervised by the Board and bank holding companies with total consolidated assets of $50 billion or more to submit reports to the Board, the Council, and the FDIC on the nature and extent of (i) the company's credit exposure to other significant nonbank financial companies and significant bank holding companies; and (ii) the credit exposure of such significant entities to the company.[5]

Title I of the Dodd-Frank Act defines a "nonbank financial company" to include both a U.S. nonbank financial company and a foreign nonbank financial company. The statute, in turn, defines a U.S. nonbank financial company as a company (other than a bank holding company and certain other specified types of entities)[6] that is (i) incorporated or organized under the laws of the United States or any State; and (ii) predominantly engaged in financial activities. A foreign nonbank financial company is defined as a company (other than a bank holding company or foreign bank or company that is, or is treated as, a bank holding company) that is (i) incorporated or organized outside the United States; and (ii) predominantly engaged in financial activities.[7] The proposed rule incorporates these definitions.[8] Thus, the term "nonbank financial company"

[1] *See* 12 U.S.C. 5321. The ten voting members of the Council are: The Secretary of the Treasury (who is also Chairperson of the Council); the Chairman of the Board; the heads of the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency ("OCC"), the Securities and Exchange Commission ("SEC"), the Federal Deposit Insurance Corporation ("FDIC"), the Commodity Futures Trading Commission ("CFTC"), the Federal Housing Finance Agency ("FHFA"), and the National Credit Union Administration ("NCUA"); and an independent member with insurance expertise appointed by the President and confirmed by the Senate. The five non-voting members of the Council are: The heads of the newly established Office of Financial Research and the Federal Insurance Office, and a State insurance commissioner, banking supervisor, and securities commissioner.

[2] *See* 12 U.S.C. 5323. The Council's decision requires the vote of at least two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council (the Secretary of the Treasury).

[3] *See* 12 U.S.C. 5323(a)(2)(C) and (b)(2)(C).

[4] *See* 12 U.S.C. 5323 *et seq.*

[5] *See* 12 U.S.C. 5365(d)(2).

[6] *See* 12 U.S.C. 5311(a)(4)(B). Besides bank holding companies, the statute specifically provides that the term "U.S. nonbank financial company" does not include (i) a Farm Credit System institution chartered and subject to the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*), (ii) a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository that in each case is registered with the SEC, or (iii) a board of trade designated as a contract market (or parent thereof), or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility or a swap data repository that in each case is registered with the CFTC. *See* 12 U.S.C. 5311(a)(4)(B). Consistent with the definition of a bank holding company in section 102(a)(1) of the Dodd-Frank Act (12 U.S.C. 5311(a)(1)), a U.S. subsidiary or office of a foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 ("BHC Act") by reason of section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) ("IBA") also is not considered a U.S. nonbank financial company.

[7] *See id.* at § 5311(a)(4)(A). A foreign bank, or foreign company controlling a foreign bank, is treated as a bank holding company for purposes of the BHC Act if the foreign bank has a branch, agency, or commercial lending company subsidiary in the United States and does not control a U.S. bank.

[8] *See* § 225.300 of the Proposed Rule.

applies to financial firms that are not already supervised and regulated by the Federal Reserve System as bank holding companies.

The Act defines financial activities by reference to those activities that have been determined—by statute, regulation, or order—to be financial in nature under section 4(k) of the BHC Act (as amended by the Gramm-Leach-Bliley Act)[9] and, thus, are permissible for a financial holding company to conduct.[10] For purposes of Title I of the Dodd-Frank Act, a company is considered to be "predominantly engaged" in financial activities if *either* (i) the annual gross revenues derived by the company and all of its subsidiaries from financial activities, as well as from the ownership or control of an insured depository institution, represent 85 percent or more of the consolidated annual gross revenues of the company; *or* (ii) the consolidated assets of the company and all of its subsidiaries related to financial activities, as well as related to the ownership or control of an insured depository institution, represent 85 percent or more of the consolidated assets of the company.

II. Overview of the Proposed Rule

The Dodd-Frank Act requires the Board to issue regulations that establish the requirements for determining if a company is "predominantly engaged in financial activities" for purposes of Title I of the Act and that define the terms "significant nonbank financial company" and "significant bank holding company."[11] Accordingly, the Board is requesting comment on a proposed rule that would establish these criteria and define these terms.[12] The Board is requesting comment on the proposed rule at this time because the proposals are relevant to the authority of the Council to designate nonbank financial companies for supervision by the Board under section 113 of the Dodd-Frank Act. As noted previously, the Council recently requested comment on a proposed rule to implement the designation standards and process for nonbank financial companies under section 113.[13] The Board believes soliciting comment on the proposed rule at this time should facilitate public understanding of, and comment on, the Council's proposal, and allow the Council to consider potential designations of nonbank financial companies under section 113 promptly after the Council's rule is finalized.

In developing the proposed rule, the Board considered the language and purposes of the relevant statutory provisions. In addition, the Board consulted with the other voting member agencies of the Council in developing this proposed rule.

A. Predominantly Engaged in Financial Activities

1. Two-Year Test Based on Consolidated Financial Statements

The proposed rule provides that a company is predominantly engaged in financial activities if:

- The consolidated annual gross financial revenues of the company in either of its two most recently completed fiscal years represent 85 percent or more of the company's consolidated annual gross revenues (as determined in accordance with applicable accounting standards) in that fiscal year; *or*
- The consolidated total financial assets of the company as of the end of either of its two most recently completed fiscal years represent 85 percent or more of the company's consolidated total assets (as determined in accordance with applicable accounting standards) as of the end of that fiscal year.[14]

The proposed test is based on the relevant company's annual financial revenue in, or financial assets at the end of, *either* of its two most recent fiscal years. This methodology is designed to allow the Council to effectively fulfill its important responsibilities of designating (and reviewing existing designations of) those nonbank financial companies whose failure could pose a threat to the financial stability of the United States, and to allow the Board to effectively fulfill its responsibilities for supervising such firms. While the Act provides that a company's consolidated annual gross revenues and consolidated assets are to be used in determining whether the company is predominantly engaged in financial activities, the Act does not specify over what time period (*e.g.,* one year, two years, *etc.*) the annual gross revenues or consolidated assets of a company should be considered in making this determination.

The two-year test would, for example, allow the Council to designate a systemically important firm whose financial assets and revenues traditionally have met or exceeded the required 85 percent threshold, but that experienced a temporary decline in financial revenues or assets (such as, for example, due to declining financial asset prices caused by distress in the financial markets) during its last fiscal year. Similarly, the two-year test would provide the Council a period of time to reevaluate—as contemplated by the Dodd-Frank Act[15]—an existing designation with respect to a systemically important nonbank financial company should the company's level of financial revenues or assets fall below the 85 percent threshold at the end of a single year.

At the same time, however, a company would not be considered to be predominantly engaged in financial activities under the two-year test set forth in § 225.301(a)(1) or (2) of the proposed rule, and would not qualify as a nonbank financial company under this test, if the company's level of financial revenues or assets were below the 85 percent threshold in both of its two most recent fiscal years. Thus, companies that are and remain substantially engaged in *nonfinancial* activities would not be subject to potential designation by the Council under section 113 of the Dodd-Frank Act or to consolidated supervision by the Board as a result of such a designation.

The proposed rule defines the "consolidated annual gross financial revenues" of a company as that portion of the company's consolidated annual gross revenues, as determined in accordance with applicable accounting standards, that were derived, directly or indirectly, by the company or any of its subsidiaries from (i) activities that are financial in nature under section 4(k) of the BHC Act; or (ii) the ownership, control, or activities of an insured depository institution.[16] Similarly, the "consolidated total financial assets" of a company is defined as that portion of the company's consolidated total assets, as determined in accordance with applicable accounting standards, that are related to (i) activities that are financial in nature under section 4(k) of

[9] 12 U.S.C. 1843(k).

[10] *See* 12 U.S.C. 5311(a)(6). A financial holding company is a bank holding company that meets certain capital, managerial and Community Reinvestment Act standards and that has made an effective election to become a financial holding company. *See* 12 CFR 225.81 and 225.82. Financial holding companies are permitted to engage in a wider array of financial activities—including full-scope securities underwriting and dealing, insurance underwriting and agency activities, and merchant banking activities—than other bank holding companies.

[11] *See* 12 U.S.C. 5311(a)(7) and (b).

[12] The Board notes that Title II of the Dodd-Frank Act includes a separate definition of a "financial company" that is used for purposes of that Title's provisions related to the new orderly liquidation authority. *See* 12 U.S.C. 5381(a)(11) and (b) (as added by section 201 of the Dodd-Frank Act). The FDIC has responsibility for issuing regulations, in consultation with the Secretary of the Treasury, that define the term "financial company" for purposes of Title II of the Act. *See id.* at § 5381(b).

[13] *See* 76 FR 4555 (2011).

[14] *See* § 225.301(a)(1) and (2) of the Proposed Rule.

[15] *See* 12 U.S.C. 5223(d).

[16] *See* § 225.301(b) of the Proposed Rule.

the BHC Act, or (ii) the ownership, control, or activities of an insured depository institution.[17] The Dodd-Frank Act specifically provides that revenues or assets attributable to an insured depository institution are to be considered as "financial" revenues or assets for purposes of determining whether a company is predominantly financial.[18] The proposed rule clarifies that revenues and assets attributable to a subsidiary of an insured depository institution also are considered to be financial in nature. This ensures that such revenues and assets are consistently treated as financial regardless of whether a company holds an interest in such a subsidiary directly or indirectly through an insured depository institution. Moreover, under the Federal banking laws, a subsidiary of an insured depository institution generally may engage only in the types of banking activities permissible for its parent insured depository institution and other financial activities as expressly authorized by Federal law.

Under the proposed two-year test, the amount of a company's financial revenues and financial assets would be determined as a percentage of the company's consolidated annual gross revenues and consolidated total assets, respectively, as determined under and in accordance with U.S. generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS).[19] To reduce the potential for companies to arbitrage the 85 percent financial test by changing the accounting standards used for these purposes, the rule specifically provides that the accounting standards used for the predominantly financial test must be the same standards that the company uses in the ordinary course of its business in preparing its consolidated financial statements.

The Board proposes to allow companies to use their consolidated, year-end financial statements prepared in accordance with GAAP or IFRS as the basis for determining their annual gross revenue and consolidated assets for purposes of the two-year test because this methodology is likely to provide a transparent, accurate, and comparable basis for determining such amounts across companies and, thus, should facilitate the ability of companies and, if necessary, the Board or the Council to determine whether they are a nonbank financial company for purposes of Title I of the Dodd-Frank Act. Moreover, allowing companies to use the year-end consolidated financial statements that they already prepare for financial reporting or other purposes should help reduce potential regulatory burden.

To further help facilitate compliance with the proposed rule and reduce burden, the proposed rule includes two rules of construction governing the application of the two-year test to revenues and assets attributable to a company's minority, less-than-controlling equity investments in *unconsolidated* entities. Under the first rule of construction, the revenues derived from, and assets related to, a company's equity investment in another company (the "investee company") the financial statements of which are *not* consolidated with those of the company under applicable accounting standards would be considered as financial revenues or assets if the investee company itself is predominantly engaged in financial activities under the 85-percent, two-year test set forth in § 225.301(a)(1) or (2) of the proposed rule.[20] Treating the revenues and assets attributable to such an investment as financial based on the aggregate mix of the investee company's revenues and assets is consistent with the statutory definition of a nonbank financial company generally, which treats an entire nonbank company as financial if 85 percent or more of the company's revenues or assets are attributable to financial activities.[21] This approach also avoids requiring a company to determine the precise percentage of an investee company's activities that is financial in order to determine the portion of the company's revenues or assets related to the investment that should be treated as financial. Companies tend to have less access to detailed business information from other companies in which they have a non-controlling, minority investment than companies that are consolidated in the company's financial statements.

The second rule of construction would permit (but not require) a company to treat as nonfinancial the revenues and assets attributable to a limited amount of *de minimis* equity investments in investee companies without having to separately determine whether the investee company is itself predominantly engaged in financial activities.[22] This rule of construction is subject to several conditions designed to limit the potential for these *de minimis* investments to substantially alter the character of the activities of a company.

Specifically, this rule of construction provides that a company may treat revenues derived from, or assets related to, an equity investment by the company in an investee company as revenues or assets *not* derived from, or related to, activities that are financial in nature (regardless of the type of activities conducted by the other company), if (i) the company owns less than five percent of any class of outstanding voting shares, and less than 25 percent of the total equity, of the investee company; (ii) the financial statements of the investee company are not consolidated with those of the company under applicable accounting standards; (iii) the company's investment in the investee company is *not* held in connection with the conduct of any financial activity (such as, for example, investment advisory activities or merchant banking investment activities) by the company or any of its subsidiaries; (iv) the investee company is not a bank, bank holding company, broker-dealer, insurance company, or other regulated financial institution; and (v) the aggregate amount of revenues or assets treated as nonfinancial under the rule of construction in any year does not exceed five percent of the company's annual gross financial revenues or consolidated total financial assets of the company.[23]

2. Case-By-Case Determination by the Board

The proposed rule also allows the Board, on a case-by-case basis and based on all the facts and circumstances, to determine that a company is predominantly engaged in financial activities because either (i) 85 percent or more of the consolidated annual gross revenues of the company are derived from activities that are financial in nature under section 4(k) of the BHC Act or from the ownership, control, or activities of an insured depository institution or a subsidiary of such an institution; or (ii) 85 percent or more of the consolidated assets of the company are related to activities that are financial in nature under section 4(k) of the BHC Act or to the ownership, control, or activities of an insured depository

[17] *See* § 225.301(c) of the Proposed Rule.

[18] *See* 12 U.S.C. 5311(a)(6).

[19] *See* § 225.300(a) of the Proposed Rule. To account for the possibility that a foreign company may not use either GAAP or IFRS in preparing its consolidated annual financial statements, the proposed rule would allow a company, with the Board's approval, to use another set of accounting standards for purposes of determining whether the company is predominantly engaged in financial activities. In reviewing any request to use alternative accounting standards, the Board would carefully review whether the proposed alternative accounting standards are likely to ensure a fair and accurate presentation of the company's revenues and assets in a manner similar to GAAP or IFRS.

[20] *See* § 225.301(e)(1) of the Proposed Rule.

[21] *See* 12 U.S.C. 5311(a)(4) and (a)(6).

[22] *See* § 225.301(e)(2) of the Proposed Rule.

[23] *See id.*

institution or a subsidiary of such an institution.[24]

This provision of the proposed rule is designed to provide the Board the flexibility, in appropriate circumstances, to consider whether a company meets the statute's 85 percent financial revenue or asset test based on the full range of information that may be available concerning the company's activities and assets (including information obtained from other Federal or State financial supervisors or agencies) at any time. For example, the Board notes that the mix of a company's revenues or assets, as well as the risks the company may pose to the U.S. financial system, may change significantly and quickly as a result of various types of transactions or actions, such as a merger, consolidation, acquisition, establishment of a new business line, or the initiation of a new activity. Moreover, these transactions and actions may occur at any time during a company's fiscal year and, accordingly, the effects of the transactions or actions may not be reflected in the year-end consolidated financial statements of the company for several months. Section 225.301(a)(3) of the proposed rule would allow the Board to promptly consider the effect of changes in the nature or mix of a company's activities as a result of such a transaction or action where such changes may affect the judgment of the Council as to whether the company should be designated and subject to consolidated supervision by the Board under section 113 of the Dodd-Frank Act to help protect the financial stability of the United States. The Board would expect to conduct such a case-by-case review of whether a company is predominantly financial only when justified by the circumstances.

3. Activities That Are Financial in Nature

As noted above, the Dodd-Frank Act defines financial activities by reference to those activities that have been determined to be financial in nature under section 4(k) of the BHC Act (as amended by the Gramm-Leach-Bliley Act). Existing § 225.86 of the Board's Regulation Y (12 CFR 225.86) references all of the activities that already have been determined—by statute, regulation or order—to be financial in nature under section 4(k) of the BHC Act. In order to assist nonbank companies in determining whether they are predominantly engaged in financial activities, the proposed rule specifies that these activities are "financial in nature" for purposes of the proposed rule and provides cross-references to the individual parts of § 225.86 of the Board's Regulation Y that identify these activities. These activities also are summarized below.[25]

Section 4(k) of the BHC Act also authorizes the Board, in consultation with the Secretary of the Treasury, to determine in the future that additional activities are "financial in nature."[26] The proposed rule expressly recognizes that additional activities, beyond those already determined to be financial in nature and identified in § 225.86(a), (b), or (c) of the Board's Regulation Y, may be determined to be financial in nature under section 4(k).[27] Upon such a determination with respect to an activity, nonbank companies must include any revenues or assets attributable to the activity as financial revenues and assets for purposes of determining whether they are predominantly engaged in financial activities and, thus, a "nonbank financial company" for purposes of Title I of the Dodd-Frank Act.

a. *Closely Related to Banking Activities.* Among the activities that section 4(k) of the BHC Act defines as being "financial in nature" are all of the activities that the Board had determined, by regulation or order, prior to November 12, 1999, to be "so closely related to banking as to be a proper incident thereto" under section 4(c)(8) of the BHC Act.[28] These activities are listed in § 225.28(b) and § 225.86(a)(2) of the Board's Regulation Y (12 CFR 225.28(b) and 225.86(a)(2)) and include, among other activities—

- Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts);
- Leasing personal or real property or acting as agent, broker, or adviser in leasing such property;
- Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by Federal or State law;
- Acting as investment or financial advisor to any person, including serving as investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), and sponsoring, organizing, and managing a closed-end investment company;
- Acting as a futures commission merchant for the execution, clearance, or execution and clearance of any futures contract and option on a futures contract traded on an exchange in the United States or abroad;
- Engaging as principal in foreign exchange as well as a broad range of forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not;
- Issuing and selling at retail money orders and similar consumer-type payment instruments;
- Providing data processing, data storage and data transmission services, facilities, databases, advice, and access to such services, facilities, or databases by any technological means, with respect to financial data and, to a limited extent, nonfinancial data;
- Providing administrative and other services to mutual funds;
- Check cashing and wire transmission services; and
- Real estate title abstracting.

b. *Activities determined to be usual in connection with the transaction of banking abroad.* Section 4(k) also provides that "financial in nature" activities include those activities that the Board had determined by regulation in effect on November 11, 1999, to be usual in connection with the transaction of banking or other financial operations abroad. These activities are listed in § 225.86(b) of the Board's Regulation Y (12 CFR 225.86(b)) and include, among other activities:

- Management consulting services;
- Operating a travel agency in connection with the offering of financial services; and

[24] *See* § 225.301(a)(3) of the Proposed Rule.

[25] Only summary descriptions of the activities that have been determined to be financial in nature are provided in this Supplementary Information. For complete information on the scope of these activities please refer to the sections of the Board's Regulation Y referenced. Besides authorizing financial holding companies to engage in activities that have been determined to be "financial in nature," section 4(k)(1) of the BHC Act also permits a financial holding company to engage in activities that (i) the Board, in consultation with the Secretary of the Treasury, has determined to be "incidental" to a financial activity; or (ii) the Board has determined to be "complementary to financial activities and do not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally." *See* 12 U.S.C. 1843(k)(1)(A) and (B). Because section 102(a)(6) of the Dodd-Frank Act refers only to activities that have been determined to be financial in nature under section 4(k), activities that have been (or are) determined to be "incidental" to financial activities (such as "finder" activities listed in § 225.86(d) of Regulation Y) or to be "complementary" to financial activities under section 4(k) are *not* considered financial activities for purposes of determining whether a company is predominantly engaged in financial activities under section 102(a)(6) of the Dodd-Frank Act.

[26] *See* 12 U.S.C. 1843(k)(1) and (2).

[27] *See* 225.301(d)(1)(ii) and (iii) of the Proposed Rule. These activities include those activities that the Board, in consultation with the Secretary of the Treasury, may determine in a specific instance are financial in nature under section 4(k)(5) of the BHC Act and § 225.86(e) of Regulation Y (12 U.S.C. 1843(k)(5) and 12 CFR 225.86(e)) because the activities involve lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities; providing any device or other instrumentality for transferring money or other financial assets; and arranging, effecting, or facilitating financial transactions for the account of third parties.

[28] *See* 12 U.S.C. 1843(k)(4)(F).

- Organizing, sponsoring, and managing a mutual fund.

c. *Activities defined as financial in nature by the GLB Act.* The GLB Act itself also defined a number of important activities as being financial in nature. These activities, which are referenced in § 225.86(c) of the Board's Regulation Y (12 CFR 225.86(c)), include, among other activities:

- Acting as a principal or agent in the sale of insurance or annuities;
- Underwriting, dealing in, or making a market in securities; and
- Acquiring and controlling shares, assets, or other ownership interests in nonfinancial companies as part of a bona fide underwriting or merchant or investment banking activity (so-called "merchant banking" activities).

The proposed rule provides that a company may request a determination by the Board as to whether a particular activity is financial in nature for purpose of section 4(k) of the BHC Act. This procedure is substantially similar to the procedure outlined in § 225.88 of Regulation Y under which a financial holding company or other interested entity may request a determination from the Board that an activity is financial in nature or incidental to a financial activity. The Board expects this procedure might be used by those large or interconnected nonbank companies that may potentially be subject to designation by the Council under section 113 and that have questions concerning whether certain of their activities are financial in nature.

Section 102(a)(6) of the Dodd-Frank Act specifically provides that, if an activity is "financial in nature" under section 4(k) of the BHC Act, the activity is considered a financial activity for purposes of determining whether a nonbank company is predominantly engaged in financial activities. The Dodd-Frank Act does not impose any additional conditions, beyond those that may apply under section 4(k) or the Board's Regulation Y, for an activity to be considered a financial activity for purposes of the predominantly financial test.

Accordingly, the proposed rule broadly defines "financial activities" to include all activities that have been, or may be, determined to be "financial in nature" under section 4(k) regardless of where the activity is conducted by a company, regardless of whether a bank holding company or a foreign banking organization could conduct the activity under some legal authority other than section 4(k) of the BHC Act, and regardless of whether any Federal or State law other than section 4(k) of the BHC Act may prohibit or restrict the conduct of the activity by a bank holding company.[29] For example, all investment activities that are permissible for a financial holding company under the merchant banking authority in section 4(k)(4)(H) of the BHC Act and the Board's implementing regulations (*see* 12 CFR 225.170 *et seq.*) are considered financial activities even if some portion of those activities could be conducted by a financial holding company under another or more limited investment authority (such as the authority in section 4(c)(6) of the BHC Act,[30] which allows bank holding companies to make passive, non-controlling investments in any company if the bank holding company's aggregate investment represents less than five percent of any class of voting securities and less than 25 percent of the total equity of the company).[31] Likewise, all securities underwriting and dealing activities are considered financial activities for purposes of the proposed rule even if a bank holding company or other company affiliated with a depository institution may be limited in the amount of such activity it may conduct or may be prohibited from broadly engaging in the activity under the "Volcker Rule."[32]

Finally, the Board notes that section 113(c) of the Dodd-Frank Act gives the Council the authority to subject the financial activities of *any* company to supervision by the Board if the Council determines that: (i) The company is organized and operates in such a manner to evade application of Title I of the Dodd-Frank Act; and (ii) material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the company's financial activities would pose a threat to the financial stability of the United States.[33] Companies that are engaged in activities that are financial in nature, but that alter the manner in which they conduct those activities for purposes of evading designation by the Council under section 113 and supervision by the Board, may be subject to designation by the Council under the special anti-evasion authority in section 113(c). Such an attempt to evade section 113 might occur, for example, if a large, interconnected company that is predominantly engaged in financial activities slightly alters the manner in which it conducts an activity that is financial in nature so that the activity does not comply with one of the restrictions that govern the conduct of the activity by a bank holding company for the purpose of reducing the company's financial revenues and assets under section 102(a)(6) and avoiding designation under section 113 of the Dodd-Frank Act.

B. Significant Nonbank Financial Company and Significant Bank Holding Company

As discussed above, the proposed rule also defines the terms "significant nonbank financial company" and "significant bank holding company," which are used in connection with the criteria the Council must consider in determining whether to require that a nonbank financial company become supervised by the Board under section 113 of the Dodd-Frank Act. A firm that is defined as a significant nonbank financial company or a significant bank holding company does not become subject to any additional supervision or regulation by virtue of that definition. Rather, relationships between firms and these significant nonbank financial companies and significant bank holding companies become a relevant factor in other determinations and additional information is collected about these relationships.

Specifically, the proposed rule defines a "significant nonbank financial company" to mean (i) any nonbank financial company supervised by the Board; and (ii) any other nonbank financial company that had $50 billion or more in total consolidated assets as of the end of its most recently completed fiscal year.[34] The proposed rule defines a "significant bank holding company" as any bank holding company, or foreign bank that is treated as a bank holding company, that had $50 billion or more in total consolidated assets as of the end of the most recently completed calendar year (as reported by the bank holding company or foreign bank on the appropriate Federal Reserve form).[35]

In establishing these definitions, the Board considered its supervisory experience with bank holding companies as well as the fact that Congress established $50 billion in total consolidated assets as the threshold at which bank holding companies should

[29] *See* § 225.301(d)(1) and (2) of the Proposed Rule.

[30] 12 U.S.C. 1843(c)(6).

[31] Similarly, an activity that has been determined to be financial in nature under section 4(k), such as lending or insurance underwriting activities, and that is conducted by a foreign company overseas is considered a financial activity under the proposed rule even if a foreign banking organization might be able to conduct the activity overseas in reliance on section 4(c)(9) or 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(9) or (13)), rather than section 4(k).

[32] 12 U.S.C. 1851 *et seq.*

[33] 12 U.S.C. 5323(c).

[34] *See* § 225.302(b) of the Proposed Rule.

[35] *See* § 225.302(c) of the Proposed Rule.

be subject to enhanced prudential supervision without any special determination by the Council that the bank holding company's failure would pose a threat to financial stability.[36] The proposed definition is designed to provide a transparent standard that the Council may use in meeting its statutory obligation to consider the relationships of a nonbank financial company under consideration for designation with other "significant" firms. The Board notes that section 113 also permits the Council to consider a nonbank financial company's relationships with one or more other nonbank financial companies or bank holding companies that are not considered, by rule, to be significant whenever the Council determines that such risk-related information would be useful in assessing the potential for the company to pose systemic risks.[37]

In addition to being relevant to the Council's determinations regarding whether to subject a nonbank financial company to Board supervision, the terms "significant nonbank financial company" and "significant bank holding company" are used in connection with the credit exposure reports that nonbank financial companies supervised by the Board and bank holding companies and foreign banks treated as bank holding companies with $50 billion or more in assets must prepare and file under section 165(d)(2) of the Dodd-Frank Act.[38] The Board and the FDIC are jointly responsible for developing rules to implement these credit exposure reporting requirements. The Board expects to review the definition of "significant" nonbank financial companies and bank holding companies as part of the rulemaking to be conducted under section 165(d)(2) of the Dodd-Frank Act.

III. Request for Comments

The Board is interested in receiving comments on all aspects of the proposed rule. Comments also are specifically requested on the following matters:

1. With respect to the portions of the rule pertaining to whether a company is predominantly engaged in financial activities:

(a) Is the two-year test established in §§ 225.301(a)(1) and (2) appropriate, or are there other methods that should be used as a general matter to determine whether a company is predominantly engaged in financial activities?

(b) Is the use of consolidated year-end financial statements of a company prepared in accordance with GAAP or IFRS an appropriate basis for determining the company's annual gross consolidated financial revenues and consolidated assets? Are there other methods that should be permitted? If so, what are the potential benefits and drawbacks of such other methods?

(c) Are the definitions contained in the proposed rule appropriate?

(d) Are there any other activities that should either be included or excluded from the definition of activities that are considered to be financial in nature?

(e) Are there other matters that the Board should address as part of the rulemaking to establish the requirements for determining if a company is predominantly engaged in financial activities as required by section 102(b) of the Dodd-Frank Act?

2. With respect to the proposed definitions of significant entities:

(a) Are the definitions contained in the proposed rule appropriate?

(b) Are there other matters that the Board should address as part of the rulemaking to define the terms "significant nonbank financial company" and "significant bank holding company"?

IV. Administrative Law Matters

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget ("OMB").

The collections of information that are proposed by this rulemaking are found in 12 CFR 225.301(f). Under this section, a company may request a determination from the Board as to whether a particular activity is financial in nature for purposes of this section. The request must be in writing and must include specific information as described in section 225.301(f)(2). Submission of such a request by a company is voluntary. Submitters of such requests are expected to be nonbank companies that believe the nature, scope, size, scale, concentration, interconnectedness or mix of its activities might cause the firm to be considered for designation by the Council under section 113 of the Dodd-Frank Act and that seek guidance as to whether the company is predominantly engaged in financial activities and, thus, eligible for such designation.

The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number will be assigned. It is estimated that the burden per response would be four hours and that there would be three respondents providing this information annually. Therefore, the total amount of annual burden is estimated to be twelve hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

B. Regulatory Flexibility Act

In accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* ("RFA"), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule would not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

In accordance with sections 102(b) and 102(a)(7) of the Dodd-Frank Act, the Board is proposing to amend Regulation Y (12 CFR 225 *et seq.*) to establish the criteria for determining if a company is "predominantly engaged in financial activities" and to define the terms "significant nonbank financial company" and "significant bank holding company."[39] The reasons and justifications for the proposed rule are described in the **SUPPLEMENTARY INFORMATION**. As discussed in the **SUPPLEMENTARY INFORMATION**, the criteria and definitions that would be established by the proposed rules are

[36] *See* 12 U.S.C.. 5365 *et seq.*

[37] *See* 12 U.S.C. 5323(a)(2)(K) and (b)(2)(K).

[38] 12 U.S.C. 5365(d)(2).

[39] *See* 12 U.S.C. 5311(a)(7) and (b).

relevant to the authority of the Council to require that a nonbank financial company become subject to consolidated prudential supervision by the Board because material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could pose a threat to the financial stability of the United States.

Although asset size may not be the determinative factor of whether a company may pose systemic risks, it is an important consideration.[40] Under regulations issued by the Small Business Administration ("SBA"), firms within the "Finance and Insurance" sector are considered "small" if they have asset sizes that vary from $7 million or less in assets to $175 million or less in assets.[41] The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. A financial firm that is at or below these size thresholds is not likely to be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such a firm, or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities, is not likely to pose a threat to the financial stability of the United States.[42]

In addition, as described in the Supplementary Information, the Board also has taken several steps to reduce the potential burden of the proposed rule on all companies that may be affected by the rule. These steps include allowing companies to use their consolidated, year-end financial statements prepared in accordance with GAAP or IFRS as the basis for determining whether they are predominantly engaged in financial activities, and the establishment of two rules of construction governing the application of the two-year test to revenues and assets attributable to a company's minority, less-than-controlling equity investments in other unconsolidated entities.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board proposes to amend Regulation Y, 12 CFR part 225, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1844(b), 3106 and 3108, 1817(j)(13), 1818(b)), 1831i, 1972, Pub. L. 98–181, title IX, and 5311(a)(7) and (b).

2. Add Subpart N to part 225 to read as follows:

Subpart N—Nonbank financial companies supervised by the Board.

Sec.

225.300 Definitions.
225.301 Nonbank companies "predominantly engaged" in financial activities.
225.302 Significant nonbank financial companies and significant bank holding companies.

§ 225.300 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Applicable accounting standards.*—The term "applicable accounting standards" with respect to a company means U.S. generally accepted accounting principles (GAAP), international financial reporting standards (IFRS), or such other accounting standards applicable to the company that the Board determines are appropriate, that the company uses in the ordinary course of its business in preparing its consolidated financial statements.

(b) *Foreign nonbank financial company.*—The term "foreign nonbank financial company" means a company (other than a bank holding company, a foreign bank or company that is subject to the BHC Act by reason of section 8(a) of the International Banking Act of 1978, or a subsidiary of any of the foregoing) that is—

(1) Incorporated or organized in a country other than the United States; and

(2) Predominantly engaged (including through a branch in the United States) in financial activities as defined in § 225.301 of this subpart.

(c) *Nonbank financial company.*—The term "nonbank financial company" means a U.S. nonbank financial company and a foreign nonbank financial company.

(d) *Nonbank financial company supervised by the Board.*—The term "nonbank financial company supervised by the Board" means a nonbank financial company or other company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5323) should be supervised by the Board and for which such determination is still in effect.

(e) *State.*—The term "State" includes any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(f) *U.S. nonbank financial company.*—The term "U.S. nonbank financial company" means a company that—

(1) Is incorporated or organized under the laws of the United States or any State;

(2) Is predominantly engaged in financial activities as defined in § 225.301 of this subpart; and

(3) Is not—

(i) A bank holding company or a subsidiary of a bank holding company;

(ii) A Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*);

(iii) A national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company or a subsidiary of a bank holding company), security-based swap execution facility, or security-based swap data repository that, in each case, is registered with the Securities and Exchange Commission as such; or

(iv) A board of trade designated as a contract market (or parent thereof), a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company or a subsidiary of a bank holding company), a swap execution facility, or a swap data repository that, in each case, is registered with the Commodity Futures Trading Commission as such.

§ 225.301 Nonbank companies "predominantly engaged" in financial activities.

(a) *In general.* A company is "predominantly engaged in financial activities" for purposes of section 102 of

[40] *See* 76 FR 4555 (2011).

[41] 13 CFR 121.201.

[42] The terms "significant nonbank financial company" and "significant bank holding company" also are used in the credit exposure reporting provisions of section 165(d) of the Dodd-Frank Act, which apply to bank holding companies and foreign banks that are treated as a bank holding company that have $50 billion or more in assets (as well as nonbank financial companies supervised by the Board). Bank holding companies and foreign banks subject to these credit exposure reporting requirements substantially exceed the $175 million asset threshold at which a banking entity is considered "small" under regulations issued by the SBA.

the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5311) if—

(1) The consolidated annual gross financial revenues of the company in either of its two most recently completed fiscal years represent 85 percent or more of the company's consolidated annual gross revenues (as determined in accordance with applicable accounting standards) in that fiscal year;

(2) The consolidated total financial assets of the company as of the end of either of its two most recently completed fiscal years represent 85 percent or more of the company's consolidated total assets (as determined in accordance with applicable accounting standards) as of the end of that fiscal year; or

(3) The Board determines, based on all the facts and circumstances, that—

(i) The consolidated annual gross financial revenues of the company represent 85 percent or more of the company's consolidated annual gross revenues; or

(ii) The consolidated total financial assets of the company represent 85 percent or more of the company's consolidated total assets.

(b) *Consolidated annual gross financial revenues.* For purposes of this section, the "consolidated annual gross financial revenues" of a company means that portion of the consolidated annual gross revenues of the company (as determined in accordance with applicable accounting standards) that were derived, directly or indirectly, by the company or any of its subsidiaries from—

(1) Activities that are financial in nature; or

(2) The ownership, control, or activities of an insured depository institution or any subsidiary of an insured depository institution.

(c) *Consolidated total financial assets.* For purposes of this section, the "consolidated total financial assets" of a company means that portion of the consolidated total assets of the company (as determined in accordance with applicable accounting standards) that are related to—

(1) Activities that are financial in nature; or

(2) The ownership, control, or activities of an insured depository institution or any subsidiary of an insured depository institution.

(d) *Activities that are financial in nature.* (1) *In general.* The following activities shall be considered to be financial in nature for purposes of this § 225.301—

(i) Any activity, wherever conducted, described in §§ 225.86(a), (b), or (c) of subpart I of this part;

(ii) Any activity, wherever conducted, determined to be financial in nature under, and in accordance with, § 225.86(e) of subpart I; and

(iii) Any other activity, wherever conducted, determined to be financial in nature by the Board, in consultation with the Secretary of the Treasury, under section 4(k)(1)(A) of the BHC Act (12 U.S.C. 1843(k)(1)(A)).

(2) *Effect of other authority.* Any activity described in paragraph (d)(1) of this section is considered financial in nature for purposes of this section regardless of whether—

(i) A bank holding company (including a financial holding company or a foreign bank) may be authorized to engage in the activity, or own or control shares of a company engaged in such activity, under any other provisions of the BHC Act or other Federal law including, but not limited to, section 4(a)(2), section 4(c)(5), section 4(c)(6), section 4(c)(7), section 4(c)(9), or section 4(c)(13) of the BHC Act (12 U.S.C. 1843(a)(2), (c)(5), (c)(6), (c)(7), (c)(9), or (c)(13)) and the Board's implementing regulations; or

(ii) Other provisions of Federal or State law or regulations prohibit, restrict, or otherwise place conditions on the conduct of the activity by a bank holding company (including a financial holding company or foreign bank) or bank holding companies generally.

(e) *Rules of construction.* For purposes of determining whether a company is predominantly engaged in financial activities under paragraph (a)(1) or (2) of this section, the following rules shall apply—

(1) *Investments that are not consolidated.* Except as provided in paragraph (e)(2) of this section, revenues derived from, or assets related to, an equity investment by the company in another company the financial statements of which are not consolidated with those of the company under applicable accounting standards shall be treated as revenues derived from, and assets related to, activities that are financial in nature if the other company is predominantly engaged in financial activities as defined in paragraph (a)(1) or (2) of this section.

(2) *Treatment of de minimis investments.* A company may treat revenues derived from, or assets related to, an equity investment by the company in another company as revenues or assets not derived from, or related to, activities that are financial in nature, regardless of the type of activities conducted by the other company, if—

(i) The company's aggregate ownership interest in the other company constitutes less than five percent of any class of outstanding voting shares, and less than 25 percent of the total equity, of the other company;

(ii) The financial statements of the other company are not consolidated with those of the company under applicable accounting standards;

(iii) The company's investment in the other company is not held in connection with the conduct by the company or any of its subsidiaries of an activity that is considered to be financial in nature for purposes of this subpart (such as, for example, investment advisory activities or merchant banking activities);

(iv) The other company is not—

(A) A depository institution or a subsidiary of a depository institution;

(B) A bank holding company or a savings and loan holding company;

(C) A foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7));

(D) Any of the following entities registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*)—

(*1*) A broker or dealer;

(*2*) A clearing agency;

(*3*) A nationally recognized statistical rating organization;

(*4*) A transfer agent;

(*5*) An exchange registered as a national securities exchange; or

(*6*) A security-based swap execution facility, security-based swap data repository, or security-based swap dealer;

(E) An investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*);

(F) Any of the following entities registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*)—

(*1*) A futures commission merchant;

(*2*) A commodity pool operator;

(*3*) A commodity trading advisor;

(*4*) An introducing broker;

(*5*) A derivatives clearing organization;

(*6*) A retail foreign exchange dealer; or

(*7*) A swap execution facility, swap data repository, or swap dealer;

(G) A board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); or

(H) An insurance company subject to supervision by a State or foreign insurance authority; and

(v) The aggregate dollar amount of revenues or assets treated by the company as not financially related under this paragraph (e)(2) does not exceed 5 percent of the consolidated annual gross financial revenues of the company or the consolidated total financial assets of the company, respectively, in that year.

(f) *Requests regarding activities that may be financial in nature.* (1) *In general.* A company may request a determination from the Board as to whether a particular activity is financial in nature for purposes of this section.

(2) *Required information.* A request submitted under this paragraph (f) must be in writing and must—

(i) Identify and describe the activity for which the determination is sought, specifically describing what the activity involves and how the activity is conducted;

(ii) Explain in detail why the activity should or should not be considered financial in nature for purposes of this section; and

(iii) Provide information supporting the requested determination and any other information required by the Board concerning the activity.

§ 225.302 Significant nonbank financial companies and significant bank holding companies.

(a) *In general.* This section defines the terms "significant nonbank financial company" and "significant bank holding company" as such terms are used in—

(1) Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") (12 U.S.C. 5323) relating to the designation of nonbank financial companies by the Financial Stability Oversight Council for supervision by the Board; and

(2) Section 165(d)(2) of the Dodd-Frank Act (12 U.S.C. 5365(d)(2)) relating to the credit exposure reports required to be filed by—

(i) A nonbank financial company supervised by the Board; and

(ii) A bank holding company or foreign bank subject to the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) that has $50 billion or more in total consolidated assets.

(b) *Significant nonbank financial company.* A "significant nonbank financial company" means—

(1) Any nonbank financial company supervised by the Board; and

(2) Any other nonbank financial company that had $50 billion or more in total consolidated assets (as determined in accordance with applicable accounting standards) as of the end of its most recently completed fiscal year.

(c) *Significant bank holding company.* A "significant bank holding company" means any bank holding company or foreign bank treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) that had $50 billion or more in total consolidated assets as of the end of the most recently completed calendar year, as reported—

(1) In the case of a bank holding company (other than a foreign banking organization), on the Federal Reserve's FR Y–9C (Consolidated Financial Statements for Bank Holding Companies); and

(2) In the case of a foreign banking organization that is or is treated as a bank holding company, on the Federal Reserve's Form FR Y–7Q (Capital and Asset Report for Foreign Banking Organizations).

By order of the Board of Governors of the Federal Reserve System, February 7, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–2978 Filed 2–10–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AD37

Amendments to Deposit Insurance Regulations: Deposit Insurance Coverage Training; SMDIA Notification

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The FDIC is proposing a rule that would promote public confidence in Federal deposit insurance by providing depositors with improved access to accurate information about FDIC insurance coverage of their accounts at insured depository institutions (IDIs). The proposed rule would accomplish this goal in three ways. First, it would require certain IDI personnel to complete FDIC-provided training on the fundamentals of FDIC deposit insurance coverage. These IDI personnel would include any employee with authority to open deposit accounts and/or respond to customer questions about FDIC insurance coverage (hereafter "employees"). Second, the proposed rule would require IDIs to implement procedures so that employees, when opening a new deposit account, inquire whether the customer has an ownership interest in any other account at the IDI and, if so, whether the customer's aggregate ownership interest in deposit accounts, including the new account, exceeds the Standard Maximum Deposit Insurance Amount ("SMDIA"). If this is the case, then the IDI employee would be required to provide the customer with a copy of the FDIC's publication, *Deposit Insurance Summary.* The proposed rule would apply to deposit accounts opened in person at the IDI, by telephone, mail, and via the Internet or other technology. Third, the rule would require IDIs to provide a link to the FDIC's Electronic Deposit Insurance Estimator ("EDIE") on any Web site the IDI maintains for use by deposit customers.

DATES: Written comments must be received by the FDIC no later than April 12, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments.
- *E-mail: comments@fdic.gov.* Include RIN # 3064–AD37 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, *Attention:* Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station located at the rear of the FDIC's 550 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions must include the agency name and use the title "Part 330—Deposit Insurance Education." All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Martin W. Becker, Senior Consumer Affairs Specialist, Deposit Insurance Section, Division of Supervision and Consumer Protection, (202) 898–6644, *mbecker@fdic.gov;* or Catherine A.

Ribnick, Counsel, Legal Division, (202) 898–6803, *cribnick@fdic.gov*; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Insured Depository Institution Employee Education on Deposit Insurance

FDIC regulations currently do not require employees at IDIs to be trained in the basic principles of FDIC deposit insurance coverage or to assist customers in ascertaining whether their deposits are fully covered by Federal deposit insurance. The FDIC receives tens of thousands of telephone calls, e-mails and correspondence annually from depositors and IDI employees seeking information and advice about FDIC deposit insurance coverage. These inquiries reveal that many depositors do not know whether their deposits are fully insured and that bank employees often are unfamiliar with the scope of deposit insurance coverage. In addition, the FDIC regularly receives complaints from IDI customers, asserting that their banks were unable to answer their deposit insurance questions or, in some cases, may have provided inaccurate deposit insurance guidance. The FDIC is concerned that these situations could cause financial harm to depositors and have the potential to undermine customer confidence in depository institutions and the Federal deposit insurance system.

To address the issues described above, the FDIC is proposing to add a new section to its insurance regulations, which appear at 12 CFR Part 330. This new section would establish three new requirements for IDIs.

First, IDIs would be required to have employees with the authority to open deposit accounts and/or respond to customer questions about FDIC deposit insurance coverage complete a computer-based instructional ("CBI") program provided to IDIs by the FDIC. This program would provide users with an introduction to FDIC deposit insurance coverage, with specific focus on the general principles of insurance coverage and the rules and requirements for the account ownership categories. It would also introduce users to the information resources available from the FDIC, including EDIE, deposit insurance guides and on-demand videos. Further, this self-paced training module would include frequent knowledge checks to help the user evaluate his or her understanding of the information presented.

This self-administered training program would require less than two hours for most employees to complete. All employees would be required to complete the training once in every 12-month period. Each new employee with the duties previously described would be required to take the training within 30 days of commencing employment. Current employees at the time of the effective date of the final rule would be required to take the training within 60 days of the effective date.

Further, IDIs are encouraged to provide additional training, using a range of media, to help employees understand the FDIC's deposit insurance rules. The FDIC provides multiple, cost-free training resources on the deposit insurance rules to the industry, for use on a voluntary basis, including in-person training sessions, written materials, videos, EDIE and telephone seminars presented by FDIC personnel.

Second, IDIs would be required to institute procedures ensuring that, regardless of the manner in which a customer opens a new account, the employee opening the account must inquire as to the existence of other deposit accounts at the same IDI and whether the aggregated account balance exceeds the SMDIA, currently $250,000. Thus, for an account opened in person or by telephone, the employee opening the account would ask the customer whether the customer maintains any other accounts at the IDI (including accounts opened at other IDI branch locations) and, if so, whether the combined balances of all the accounts exceed the SMDIA. If the response is in the affirmative, the IDI employee would provide the customer with a copy of the FDIC's *Deposit Insurance Summary* publication. In the case of deposit accounts opened by mail, via the Internet or by means of other technology, these inquiries can be included in the paper or electronic application form, with a link to the *Deposit Insurance Summary* publication supplied. The rule would not require an IDI to provide counsel or advice to the customer regarding how to structure multiple deposit accounts to maximize deposit insurance coverage.

The rule would apply to all types of deposit accounts opened by a customer, with the exception of pass-through accounts as to which the IDI does not, in the normal course of business, keep records of the beneficial owners. The rule would not impose a deposit insurance training requirement on third parties (*e.g.,* deposit brokers or affinity groups) that directly or indirectly promote the deposit of funds in a specified IDI. However, the FDIC makes ample deposit insurance resources publicly available, and the Corporation urges any entity that encourages or facilitates the placement of deposits in IDIs to provide appropriate information in response to client inquiries regarding FDIC deposit insurance coverage.

Third, the proposed rule would require an IDI to provide a link to EDIE on any Web site it maintains for use by customers. IDIs can link to EDIE, at no cost, in two ways—via Online EDIE or Brandable EDIE. Online EDIE is available directly from the FDIC's Web site at *http://www.fdic.gov/edie.* With Online EDIE, IDIs link to the application, which resides on the FDIC's Web site, and IDI customers are then taken from the IDI's Web site to the FDIC's Web site. Brandable EDIE, which can be accessed free from FDIC Connect, allows an IDI to customize and integrate the EDIE application into the IDI's own Web site, so customers can access EDIE without leaving the IDI's Web site.

II. Regulatory Burden on Insured Depository Institutions

The FDIC believes the implementation of this rule would not impose a significant regulatory burden on the industry. The proposed rule is circumscribed and modest in its requirements. First, IDI employees with authority to open accounts and/or respond to a customer's deposit insurance question would be required to complete a short training program annually. The training program would be provided to IDIs by the FDIC at no cost. Second, when opening a new account, employees would simply inquire (1) whether the customer has other deposits at the same IDI and (2) whether such deposits, including the new account, exceed the SMDIA. The rule would not require IDI employees to advise customers on how to maximize deposit insurance coverage. The proposed rule would require IDI employees to provide the customer with the FDIC's publication, *Deposit Insurance Summary.* Lastly, the rule would require an IDI to maintain a link to EDIE on its Web site.

The Corporation believes it is reasonable to expect employees at IDIs to have sufficient familiarity with basic rules for Federal deposit insurance coverage so employees can provide accurate information to customers who wish to confirm their deposit insurance coverage. To the extent that compliance with the proposed rule imposes an obligation on the industry, it must be weighed against the benefit to depositors by reinforcing their confidence in Federal deposit insurance and preventing unnecessary financial losses to customers if their IDI should fail.

III. Request for Comments

The FDIC requests comment on all aspects of the proposed rule, including cost, regulatory burden and benefits to consumers. In particular, the FDIC seeks comments with respect to the following questions:

- Does the proposed rule strike the right balance between meeting depositors' need for accurate deposit insurance information and the potential cost to and regulatory burden on IDIs?
- Is the scope of the proposed rule appropriate? In its present form, the rule would require training for all IDI employees with authority to open accounts and/or respond to customers' inquiries on deposit insurance coverage. Should the training extend to all IDI employees who work in bank retail offices, not just the employees with these specific responsibilities?
- The rule would require IDI employees to inquire whether the customer has an ownership interest in any other deposit accounts at the IDI and, if so, whether the customer's total ownership interest in deposit accounts, including the new account, exceeds the Standard Maximum Deposit Insurance Amount. Should the inquiry only apply to aggregated deposits that exceed the SMDIA of $250,000 or to aggregated deposits that may approach the SMDIA? And if so, what dollar amount or percentage of the SMDIA should trigger the obligation to provide depositors with the FDIC's *Deposit Insurance Summary* publication?
- In addition to requiring IDIs to make EDIE available on their Web sites, should the FDIC require IDIs to maintain, in their retail office lobbies, a dedicated computer terminal containing the EDIE application, which all customers could use on their own, or with assistance from IDI employees, to generate reports on the customer's deposit insurance coverage?
- In addition to requiring IDIs to provide the FDIC's *Deposit Insurance Summary* publication to depositors whose combined deposits at the IDI exceed the SMDIA, should IDIs be required to make this publication available in their retail office lobbies so all depositors have access to this important information?
- Should the CBI software program include a feature that would allow IDIs to confirm that training has been completed by covered employees?

IV. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example, have we organized the material to suit your needs? If not, how could this material be better organized? Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated? Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification? Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand? What else could we do to make the regulation easier to understand?

B. Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3501 *et seq.*), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The proposed rule requires IDIs to implement procedures so that, whenever a customer opens a new deposit account at an insured depository institution, the employee opening the account shall inquire whether the customer has an ownership interest in any other accounts at the IDI and, if so, whether the customer's aggregate ownership interest in deposit accounts, including the new account, exceeds the Standard Maximum Deposit Insurance Amount. If the customer responds affirmatively, then the IDI employee shall provide the customer with the FDIC's publication, *Deposit Insurance Summary.* Since this is an FDIC-prepared publication, there is no paperwork burden involved. In the case of deposit accounts opened by mail or via the Internet or other technology, the publication can be provided in paper form or through a link to the electronic version.

Commenters may submit comments on aspects of this notice that may affect reporting and disclosure requirements to the addresses listed in the **ADDRESSES** section of this NPR. Paperwork Burden comments should reference "Part 330—Deposit Insurance Education, OMB Control No. 3064–NEW."

C. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires a Federal agency publishing a notice of proposed rulemaking to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. 5 U.S.C. 603(a). Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a "small entity" includes a bank holding company, commercial bank or savings association with assets of $175 million or less (collectively, small banking organizations). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the proposed rule would not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b). Pursuant to section 605(b) of the RFA, the FDIC certifies that the proposed rule would 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 proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 268).

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 set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 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(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(g), 1821(a).

2. Add § 330.17 to read as follows:

§ 330.17 Deposit insurance training.

(a) *Purpose.* The purpose of this section is to maintain confidence in Federally insured depository institutions and to protect depositors by requiring insured depository institution employees with authority to open accounts and/or respond to customer inquiries regarding deposit insurance coverage ("employees"), to complete training on basic deposit insurance principles once in any twelve month period. New employees must complete the training within 30 days of commencing employment. Current employees are required to complete the training within 60 days of the effective date of the final rule.

(b) *Applicability.* The requirements in this section shall apply to all insured depository institution employees who have the authority to open accounts and/or respond to customer inquiries regarding deposit insurance coverage.

(c) *Procedure.* (1) *Insured Depository Institution Personnel Education.* (i) *Training.* An insured depository institution must require each employee with the authority to open accounts and/or respond to customer inquiries regarding deposit insurance coverage to complete basic deposit insurance training annually, using an FDIC-provided training module. Each new employee with the authority to open accounts and/or respond to customer inquiries regarding deposit insurance coverage must be required to undergo such training within 30 days of commencing employment.

(ii) *Training Materials.* The FDIC will provide the training module in the form of a self-administered computer-based instructional program.

(2) *Ascertaining Insured Status.* An insured depository institution must implement procedures so that, whenever a customer opens a new deposit account at an insured depository institution, the employee opening the account shall inquire whether the customer has an ownership interest in any other accounts at the IDI and, if so, whether the customer's aggregate ownership interest in deposit accounts, including the new account, exceeds the Standard Maximum Deposit Insurance Amount. If the customer responds affirmatively, then the IDI employee shall provide the customer with the FDIC's *Deposit Insurance Summary* publication. In the case of deposit accounts opened by mail or via the Internet or other technology, these inquiries can be included in the paper or electronic application form, with the link to *the Deposit Insurance Summary* publication provided.

(d) *Definitions.* (1) *Account* shall mean a deposit account at a depository institution that is held by or offered to a customer. It includes time, demand, savings, and negotiable order of withdrawal accounts. The term does not include a fiduciary account as to which the insured depository institution does not, in the normal course of business, keep records of beneficial owners of the deposits in the account.

(2) *New Account* shall mean any deposit account at an insured depository institution to which the insured depository institution assigns a unique identifier that serves to distinguish the account from other, existing accounts at the depository institution.

By order of the Board of Directors.

Dated at Washington, DC, this 7th day of February, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–3085 Filed 2–10–11; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 334

[Docket No. FDA–1978–N–0021; Formerly Docket No. 78N–036L]

RIN 0910–AF38

Professional Labeling for Laxative Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rulemaking to amend the tentative final monograph (1985 TFM) for over-the-counter (OTC) laxative drug products (products that relieve occasional constipation). FDA is proposing that sodium phosphate salts (dibasic sodium phosphate, monobasic sodium phosphate, and the combination of dibasic sodium phosphate/monobasic sodium phosphate salts in a solution dosage form) are not generally recognized as safe (GRAS) for bowel cleansing. This document also would withdraw the professional labeling proposed for sodium phosphate salts in the 1985 TFM. Professional labeling is additional information about an OTC drug that is directed to healthcare professionals who prescribe, administer, or dispense medications and is not included in OTC drug product labeling for consumers. FDA is issuing this proposed rule after a careful review of new data and information on the serious side effects that have been associated with the customary dose of OTC sodium phosphates solution (approximately 60 grams (g) of sodium phosphates taken in two 45-milliliter (mL) doses 12 hours apart or approximately 50 g of sodium phosphates taken in a 45-mL dose followed by a 30-mL dose 12 hours later) for bowel cleansing prior to colonoscopy. This proposed rule is part of FDA's ongoing review of OTC drug products.

DATES: Submit electronic or written comments by March 14, 2011. *See* section VI of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. FDA–1978–N–0021 (formerly Docket No. 78–N–036L) and RIN number 0910–AF38, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (For paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name, docket number (Docket No. FDA–1978–N–0021) (formerly Docket No. 78N–036L) and Regulatory Information Number (RIN) (RIN 0910–AF38) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov* including any personal information provided. For additional information on submitting comments, *see* the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket, to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts

and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary S. Robinson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, MS5411, Silver Spring, MD 20993–0002, 301–796–2090.

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I. Glossary

As used in this document:

ACE inhibitor means angiotension-converting enzyme inhibitor; a prescription drug for hypertension.

Acute phosphate nephropathy means a type of nephrocalcinosis attributed to the use of oral sodium phosphate products.

Acute kidney failure means sudden inability of the kidney to remove wastes, concentrate urine, and conserve electrolytes.

ARB is an abbreviation for angiotension receptor blocker, a prescription drug for hypertension.

Biologic plausibility means a causal association (or relationship between two factors) that is consistent with existing medical knowledge.

Bowel cleansing means clearing the lower digestive tract in preparation for a colonoscopy.

Bowel cleansing system means a laxative product containing a combination of several different laxative ingredients for sequential administration at specified intervals for use in cleansing the bowel prior to surgery, colon x-ray, or endoscopic examination.

Electrolyte disturbance means abnormal levels of electrolytes such as sodium, potassium, calcium, or phosphorous found in the blood and other body fluids.

End stage kidney disease means complete or near complete failure of the kidneys to function.

GFR is an abbreviation for glomerular filtration rate; is a measure of kidney function. GFR can be obtained by measuring creatinine clearance or by estimating creatinine clearance. The creatinine clearance is measured by using the values of urine creatinine concentration, urine flow rate, and plasma creatinine concentration, while the estimated creatinine clearance is calculated by using a formula that uses measured serum creatinine. Creatinine clearance is not a precise GFR measurement, but rather an accepted surrogate for GFR.

Nephrocalcinosis means a condition characterized by precipitation of calcium phosphate in the tubules of the kidney resulting in kidney injury.

NSAID is an abbreviation for nonsteroidal anti-inflammatory drug; OTC and prescription drugs that relieve pain and inflammation.

OSP is an abbreviation for oral sodium phosphates, the combination of dibasic sodium phosphate and monobasic sodium phosphate salts in a tablet or solution dosage form.

PEG is an abbreviation for polyethylene glycol, a prescription drug used for bowel cleansing.

II. Background

A. Purpose of the Rule

Oral sodium phosphates (OSP) products are frequently recommended by physicians for bowel cleansing prior to a colonoscopy and other medical procedures. Both prescription tablet dosage forms and OTC OSP solution have been used for this purpose. This document addresses the use of OTC OSP solutions for bowel cleansing. The customary dose of OTC OSP solution used in medical practice for bowel cleansing is approximately 60 g of sodium phosphates (dibasic sodium phosphate and monobasic sodium phosphate salts) solution taken orally as two 45-mL doses 12 hours apart or approximately 50 g of sodium phosphates taken as a 45-mL dose followed by a 30-mL dose 12 hours later. In the tentative final monograph for OTC laxative drug products published January 15, 1985 (50 FR 2124), FDA proposed labeling for healthcare professionals for the use of OTC sodium phosphates solution for bowel cleansing. Subsequently, FDA approved sodium phosphates tablets for prescription use for bowel cleansing through the new drug application (NDA) approval process. However, over the years concerns have been raised about the safety of all OSP, both solutions and tablets, for bowel cleansing.

Most recently, FDA received a petition requesting that FDA either withdraw the marketing authorization of OSP for bowel cleansing or limit the marketing of these products to prescription only and require a "black box" warning (Ref. 1). The petition presented the following arguments to support these requests:

- Trend data on adverse events demonstrate an increase in the number of reports of acute renal failure and nephrocalcinosis associated with the use of OSP for bowel cleansing.
- The available published data suggest that the problem is larger in scope than initially believed.
- The occurrence of nephrocalcinosis in individuals with no identifiable risk factors renders screening insufficient.
- There are equally effective and safer alternative bowel preparation agents that are available.

The petition stated that new safety information warrants reconsideration of the risk/benefit ratio to the public of the continued OTC and prescription use of OSP products for bowel cleansing under their present labeling.

FDA concluded that the currently available information was not sufficient to warrant the withdrawal of OSP products from the market. However, FDA also concluded that the use of OSP for bowel cleansing poses a serious risk of adverse events in some patients and that current measures of mitigating these risks have been unsuccessful. Therefore, on December 11, 2008, FDA granted the petition's request to limit the marketing of OSP products for bowel cleansing to prescription only and to require a boxed warning in product labeling (Ref. 2). We also concluded that additional measures were necessary to manage the potential

risks associated with the use of prescription OSP products for bowel cleansing. Under new authority granted by the Food and Drug Administration Amendments Act of 2007, FDA stated that it had notified the NDA holder of prescription OSP products that it must develop a risk evaluation and mitigation strategy (REMS) that includes the development of a Medication Guide and a communication strategy targeted at healthcare providers who are likely to prescribe or dispense OSP products and/or perform followup assessments of patients following bowel cleansing. We also determined that prospective clinical trials are necessary to assess the risk of acute kidney injury in patients using prescription OSP products for bowel cleansing, and to better define the risk factors that predispose patients to such injury.

Specifically, this document addresses the proposed professional labeling for OTC sodium phosphate salts for bowel cleansing described in § 334.80 of the 1985 TFM. Under the 1985 TFM, this additional labeling would have been provided only to healthcare professionals and not the general public, and the labeling would not have been included as part of the OTC drug product label. Professional labeling may be provided to health professionals in separate labeling distributed by pharmaceutical sales representatives. The proposed labeling would have provided certain information to healthcare professionals about the use of sodium phosphate products for bowel cleansing use. In this document we are proposing that the professional labeling for the use of sodium phosphates salts for bowel cleansing use be removed from the 1985 TFM because of our safety concern with the bowel cleansing use of OSP products. This proposed rule does not address the proposed professional labeling for bowel cleansing for other active ingredients included in § 334.80. FDA intends to address the proposed professional labeling of these active ingredients in a future **Federal Register** publication.

This proposed rule is consistent with the agency's determination that OSP products indicated for bowel cleansing should be limited to prescription only. In this document FDA also proposes to classify, the individual sodium phosphate salts (*i.e.,* dibasic sodium phosphate and monobasic sodium phosphate), as not GRAS (*i.e.,* nonmonograph) for the professional labeling indication proposed in the 1985 TFM, *i.e.,* "For use as part of a bowel cleansing regimen in preparing the patient for surgery or for preparing the colon for x-ray endoscopic examination." Thus, this proposed rule would amend § 310.545 (21 CFR 310.545) to include sodium phosphate salts, singly and in combination for bowel cleansing use as described in § 334.80 of the 1985 TFM.

In addition, the safety issues raised by the prescription and professional use of OSP for bowel cleansing has led FDA to reconsider the appropriateness of bowel cleansing, as described in § 334.66, as an OTC indication. FDA will address the status of bowel cleansing as an OTC indication in a future **Federal Register** publication.

*B. Chronology of the **Federal Register** Publications Addressing Professional Labeling for Sodium Phosphate Salts in the OTC Laxative Drug Products Rulemaking*

The current proposal is part of FDA's ongoing review of OTC drug products. There are earlier **Federal Register** publications relevant to the use of OTC sodium phosphate salts for bowel cleansing. A summary of relevant **Federal Register** publications is provided in table 1 of this document as follows:

TABLE 1—OTC LAXATIVE DRUG PRODUCTS RULEMAKING FOR MONOBASIC SODIUM PHOSPHATE AND DIBASIC SODIUM PHOSPHATE [1]

Federal Register publication	Information in document
March 21, 1975 (40 FR 12902), advance notice of proposed rulemaking (ANPR) for OTC laxative drug products.	Recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (Panel) Panel recommends: • General recognition of the safety and effectiveness of sodium phosphate salts and the combination of sodium phosphate salts for laxative use. • A professional labeling warning (for healthcare professionals) "Do not use in patients with megacolon, as hypernatremic dehydration may occur. Use with caution in patients with impaired renal functions as hyperphosphatemia and hypocalcaemia may occur." The Panel did not recommend that the sodium phosphates salts bear an indication for preparation of the colon for x-ray and endoscopic examination. (50 FR 12902 at 12940 and 12942)
January 15, 1985 (50 FR 2124), tentative final monograph (TFM) for OTC laxative drug products.	FDA adds a provision for OTC bowel cleansing systems in § 334.32. FDA also adds the following professional labeling indication for sodium phosphates oral and rectal solutions, USP: [2] "For use as part of a bowel cleansing regimen in preparing the patient for surgery or for preparing the colon for x-ray endoscopic examination." The proposed professional labeling did not contain directions for the proposed bowel cleansing indication. (50 FR 2124 at 2157)
March 31, 1994 (59 FR 15139) Amendment to TFM for OTC laxative drug products.	Based on a number of deaths related to the OTC availability of a 240-milliliter (mL) container size for sodium phosphates oral solution, FDA proposes an amendment to the 1985 TFM to limit the container size for these products to not greater than 90 mL (3 ounces (oz)) and to add a new overdose warning alerting consumers that exceeding the recommended dose can be harmful as follows: "Do not exceed the recommended dose unless directed by a doctor. Serious side effects may occur from excess dosage."

TABLE 1—OTC LAXATIVE DRUG PRODUCTS RULEMAKING FOR MONOBASIC SODIUM PHOSPHATE AND DIBASIC SODIUM PHOSPHATE [1]—Continued

Federal Register publication	Information in document
May 21, 1998 (63 FR 27836), final rule, package size limitation and warning and directions statements for sodium phosphates oral solutions.	FDA determines that the continued OTC availability of a 240-mL container size of sodium phosphates oral poses a serious safety concern and that it cannot wait for a laxative final rule to address this concern. FDA publishes a final rule that limits the container sizes to not greater than 90 mL and adds warnings and direction statements for sodium phosphates oral and rectal solutions marketed for laxative and bowel cleansing use that includes the following: • "Do not (take or use) more unless directed by a doctor." • "Adults and children 12 years of age and over; Oral dosage is dibasic sodium phosphate 3.42 to 7.56 grams and monobasic sodium phosphate 9.1 to 20.2 grams (20 to 45 mL dibasic. sodium phosphate/monobasic sodium phosphate oral solution) "Do not take more than 45 mL (9 teaspoons or 3 tablespoons in a 24-hour period." FDA also indicates its intention to incorporate the information in 21 CFR 201.307 into the final monograph for OTC laxative drug products at a later date. *See* 21 CFR 201.307. Effective date of the package size limitation portion of the final rule was June 22, 1998, and effective date of the relabeling portion was September 18, 1998.
May 21, 1998 (63 FR 27886), amendment to TFM for OTC laxative drug products.	In an amendment to the 1985 TFM, FDA proposes extensive additional labeling for the professional use of oral and rectal sodium phosphate drug products that: • Warns healthcare professionals about the use of sodium phosphates products in the elderly, in patients taking drugs that may affect electrolyte levels, or in patients with: ○ congestive heart failure ○ impaired renal function ○ heart disease ○ acute myocardial infarction ○ unstable angina ○ preexisting electrolyte disturbances (such as dehydration, or those secondary to the use of diuretics) • Advises monitoring electrolytes and giving sufficient fluid replacement to prevent dehydration. • Describes the adverse effects on electrolyte balance that can occur when one or more doses of sodium phosphates is given in a 24-hour period. • Provides recommendations for the treatment of electrolyte imbalance. FDA also proposes additional warnings about the use of rectal dosage forms of sodium phosphate drug products that: • Warns about the use of rectal dosage forms of sodium phosphate products in children under 2 or in patients with ○ megacolon ○ imperforate colon ○ colostomy ○ rectal abnormalities ○ and about forcing the enema tip into the rectum FDA also states that it will not include a dosage greater than 7.56 gm of dibasic sodium phosphate and 20.2 g monobasic sodium phosphate in a 24-hour period in the OTC or professional labeling in the final monograph for OTC laxative drug products.
December 7, 1998 (63 FR 67399)	Final rule; stay of compliance with the relabeling requirements for rectal sodium phosphates in 21 CFR 201.307 until September 8, 1998, to allow manufacturer's additional time to relabel their products.
December 9, 1998 (63 FR 67817), notice of withdrawal of TFM amendment of May 21, 1998 (63 FR 27886).	FDA withdraws its proposed amendment of § 334.80(b)(2) of the 1985 TFM to add expanded professional labeling for oral and rectal sodium phosphates drug products and states the intent to further expand the professional labeling in a future proposed rule.
November 29, 2004 (69 FR 69278)	Final rule to extend the sodium content labeling requirement to sodium phosphates rectal products.

[1] In the 1985 TFM (50 FR 2124), FDA referred to dibasic sodium phosphate as "sodium phosphate," and monobasic sodium phosphate as "sodium biphosphate." This document uses "dibasic sodium phosphate" and "monobasic sodium phosphate," the official names listed in the USP Dictionary of USAN and International Drug Names, 2008. The document uses the term "sodium phosphate salts" to refer to dibasic sodium phosphate" and "monobasic sodium phosphate" separately or in combination.

[2] Sodium phosphates oral solution is the official name for a solution of dibasic sodium phosphate and monobasic sodium phosphate in the U.S. Pharmacopeia 31/National Formulary 26, 2008. Sodium phosphates rectal solution is the official name for a solution of dibasic sodium phosphate and monobasic sodium phosphate in the U.S. Pharmacopeia 31/National Formulary 26, 2008.

C. Other Regulatory History Relevant to This Rulemaking

1. Citizen Petition To Include Bowel Cleansing Systems Containing Sodium Phosphates Oral Solution

In the 1985 TFM, FDA proposed that certain combination bowel cleansing systems could be considered generally recognized as safe and effective (GRASE) for OTC use as bowel cleansers (50 FR 2124 at 2153). The proposed combinations did not include sodium phosphate ingredients. In a petition dated November 12, 1987, and a subsequent supplemental submission to the petition, a manufacturer requested that FDA amend the 1985 TFM to include six bowel cleansing systems (Refs. 3 and 4). In a letter dated October 26, 1989, FDA responded to the petition and found that two of the six requested kits could be GRASE for OTC use for bowel cleansing (Ref. 5). Both kits include sodium phosphates oral solution as a component. One kit contains three laxatives for sequential

administration as follows: sodium phosphates oral solution (7.56 g sodium phosphate and 20.2 g sodium biphosphate as a 45-mL solution), followed by bisacodyl (20 mg) in an oral dosage form taken at least 3 hours after the sodium phosphates oral solution, followed by a bisacodyl suppository (10 mg) taken at least 9 hours after the oral bisacodyl and at least 1 hour before the scheduled procedure. The other kit substitutes a bisacodyl enema (10 g) for the bisacodyl suppository. In its response, FDA indicated that the Agency intended that both kits would be added as GRASE OTC bowel cleansing systems in § 334.32 of the final monograph. In a letter dated December 27, 2010, FDA subsequently informed the manufacturer of its intention to withdraw its proposal to include § 344.66 Bowel Cleansing Systems in the OTC laxative final monograph based on concerns about the safety of bowel cleansing in the OTC setting (Ref. 6).

2. Citizen Petition To Include in Professional Labeling a Sodium Phosphates Oral Solution Two 45-mL Dose Regimen

In response to the 1985 TFM, one manufacturer filed a petition dated March 23, 1993, and supplements to the petition, requesting that the professional labeling (§ 334.80) be amended to include a bowel cleansing regimen consisting of two 45-mL doses of sodium phosphates oral solution, administered sequentially 10 to 12 hours apart (Refs. 7 through 12). A comment on the petition dated September 23, 1993, expressed concern about the March 23, 1993, petition request, stating that there is a potential for sodium phosphates to induce electrolyte and hemodynamic changes when ingested in two sequential doses within 24 hours (Ref. 13).

On March 1, 1996, FDA responded to the citizens petition mentioned previously, stating that the available data supported the effectiveness of the proposed bowel cleansing regimen of two 45-mL doses 10 to 12 hours apart (Ref. 14). However, FDA emphasized it was concerned about the safety of this dosage regimen because of the electrolyte and vascular volume changes that could occur. FDA explained that, should adequate safety data to support the proposed regimen become available, it might be possible for the Agency to consider this dosage regimen of two 45-mL doses, administered 10 to 12 hours apart, for inclusion in the monograph by professional labeling only. FDA ultimately denied this petition (Ref. 7) in a letter dated August 22, 1997, because we remained concerned about the safety of that dosing regimen (Ref. 15).

3. Citizen Petition To Limit Sodium Phosphates for Bowel Cleansing to Prescription Marketing

Subsequently, FDA received another citizen petition dated August 23, 2000, requesting that FDA limit the marketing of sodium phosphates oral solution for bowel cleansers to prescription status and to require a boxed warning (Ref. 16). On July 19, 2001, FDA denied the petition, stating that based on the available data and information; there was insufficient evidence at that time to support the petition's request (Ref. 17). However, FDA stated that it intended to propose in a future issue of the **Federal Register** to limit the package size of sodium phosphates oral solution to 45 mL and to require revised labeling to include more information on the safe use of these products by consumers and health professionals.

4. Citizen Petition to Include Professional Labeling for Two 30-mL Doses to Two 45-mL Doses

FDA received another citizen petition dated June 25, 2003, requesting that the Agency amend the 1985 TFM to include professional labeling for two 30-mL to two 45-mL doses of sodium phosphates oral solution given sequentially at a 10- to 12-hour dosing interval for bowel cleansing prior to diagnostic procedures (Refs. 18 and 19). The petition also included recommendations for amending the proposed professional labeling (§ 334.80).

FDA also received a number of comments objecting to the petition's requested dosing regimen (Refs. 21, 22, and 23). One comment stated that the regimen of two doses in 24 hours is not safe, primarily because it can cause dangerous electrolyte shifts. The comment asserted that the problem is exacerbated because a patient's susceptibility to electrolyte changes is not adequately evaluated prior to administration for bowel cleansing use, in spite of labeling (Ref. 21). Another comment stated that sodium phosphates oral solution should be subject to prescription control when used for bowel cleansing (Ref. 22). As an alternative to prescription status for sodium phosphates oral solution, the comment recommended that FDA limit the bowel cleansing indication to situations where sodium phosphates oral solution is included in a bowel cleansing system to be administered at a total dose of not more than 7.56 g sodium phosphate and 20.2 g sodium monobasic sodium phosphate (45 mL). The third comment stated that the sodium phosphate bowel cleansing labeling is inadequate to address the continuing problems resulting from the electrolyte derangements and volume depletion caused by these products (Ref. 23).

On December 11, 2008, FDA denied this petition (Ref. 20). Based on a review of the available data and the lack of data establishing a safe dose of OSP for bowel cleansing in the OTC setting, FDA concluded that the use of sodium phosphates oral solution for bowel cleansing in the OTC setting according to professional labeling in an OTC monograph poses an unacceptable risk of serious adverse events. FDA also concluded that the use of sodium phosphate oral solution products for bowel cleansing meets the statutory standard for prescription products set forth in the Federal Food, Drug, and Cosmetic Act (FD&C Act).

5. FDA's Educational Efforts

FDA has made a number of attempts outside the rulemaking process to educate healthcare professionals and consumers about the potential risks associated with the use of sodium phosphates oral solution for bowel cleansing. In September 17, 2001, a Science Background Paper was issued on the "Safety of Sodium Phosphates Oral Solution" (Ref. 24), in which FDA stated that physicians need to be aware that people at increased risk for electrolyte disturbances (*e.g.,* those with congestive heart failure, ascites, renal insufficiency, and dehydration) may experience serious adverse events if they use a sodium phosphates oral solution for bowel cleansing (*see* section III of this document).

In 2006, FDA issued a health alert and a second Science Background Paper stating that a rare but serious form of kidney failure has been associated with the use of OSP products for bowel cleansing (Refs. 25 and 26). In 2008, FDA issued another health alert and provided healthcare professionals with updated information on the risks associated with the use of OSP for bowel cleansing (Refs. 27 and 28). The alert stated that as a result of new safety information, FDA would require a Boxed Warning on prescription OSP products as well as the development of a REMS for these products (Ref. 27). FDA also stated its intention to publish a proposed rule to remove professional labeling for OTC OSP for bowel cleansing from the 1985 TFM (50 FR 2124 at 2157). FDA posted this information on its Web site at *http://www.fda.gov/cder/drug/infopage/osp_solution/default.htm.*

III. Safety Concerns About the Use of Oral Sodium Phosphate Products for Bowel Cleansing

A. Summary of FDA's Adverse Event Reporting System Data

As described previously, FDA has previously made a number of attempts to educate healthcare professionals and consumers about the risk of adverse effects on the kidneys that have been associated with the use of OSP products for bowel cleansing. In addition to measures taken by FDA, in 2005 a major manufacturer of OTC sodium phosphates oral solution products distributed updated professional labeling containing detailed safety information and dosing instructions (60 g of sodium phosphates (dibasic sodium phosphate and monobasic sodium phosphate salts) solution taken orally as two 45-mL doses 12 hours apart or approximately 50 g of sodium phosphates taken as a 45-mL dose followed by a 30-mL dose 12 hours later) (Ref. 29). Despite these measures and the development of products with a reduced sodium phosphate dose, FDA's Adverse Event Reporting System (AERS) continues to receive reports of acute kidney injury that have been associated with the customary dose of these products for bowel cleansing.

To date, AERS has received over 100 serious adverse event reports associated with the use of prescription and nonprescription OSP products for bowel cleansing at the customary dose. Acute renal injury associated with this use of OSP for bowel cleansing has led to kidney transplant, dialysis, long term renal failure and, in rare instances, death. The majority of these cases occurred in patients with additional risk factors for kidney injury as identified in the May 2006 Health Alert (*see* section II.C.5 of this document). There were cases, however, that occurred in patients without additional risk factors.

From 1969 to 2005, FDA received 33 reports of acute kidney injury reported to be associated with the use of OTC sodium phosphates oral solution for bowel cleansing. Among the 33 reports, 4 cases developed end-stage kidney disease with one case requiring a kidney transplant. At least 22 of the 33 cases developed chronic kidney failure, with at least 9 cases requiring hospitalization and 7 requiring dialysis. Only 5 of the 33 cases of acute kidney injury involved a dose of sodium phosphate in excess of 59.4 g.[1] In addition to the cases of acute kidney injury, there were reports of 11 fatalities, 2 cases of seizure, and 12 serious cardiac events. Most of the cases with cardiac events had electrolyte abnormalities. However, the dose of sodium phosphates involved in most of these cases was well in excess of 59.4 g.

Since 2005, there have been an additional 46 reports of acute kidney failure that have been associated with the use of OTC sodium phosphates oral solution for bowel cleansing. Twelve of these cases were reported in a published abstract (Ref. 30) with only limited information. The remaining 34 cases were reported in the AERS data base. Of the AERS cases, one required a kidney transplant, one was placed on a kidney transplant list, six required dialysis, and four cases had long term decreased kidney function. More recently (January 2008), FDA received two reports of acute kidney injury associated with a lower dose sodium phosphate oral solution regimen, *i.e.,* a 45-mL dose followed by 30-mL dose administered 10 to 12 hours apart. Both of these cases resulted in hospitalization.

An OSP in a tablet dosage form has been approved for prescription use as a bowel cleanser since 2000. The sodium phosphate dose of this product is 60 g. In 2006, FDA approved a sodium phosphate tablet with a lower sodium phosphate dose (48 g) for the same indication. There have also been a number of reports of acute kidney injury associated with the use of both of these products.

Since 2001, FDA has received 16 cases of acute kidney injury that were likely associated with the use of the 60-g prescription product. Ten of these cases required hospitalization, and at least two required dialysis. Direct evidence of calcium phosphate precipitation in kidney tubules was obtained by biopsy in one case. There were also 10 cases of seizure. In at least nine of these cases there was no previous history of seizure, and seizures began between 2 to 16 hours after use of OSP. In all 10 seizure cases, the patient had low blood sodium levels, and required hospitalization. Five of the cases of renal failure and two of the cases of seizure did not follow labeled directions for use, which may have contributed to the adverse event.

Since approval of the 48-mg dosage form of sodium phosphate tablets in 2006, 20 unique cases of kidney injury associated with the use of this lower dose product have been reported to AERS through September 12, 2008. The onset of the kidney injury occurred from several hours to 21 days after taking the product. Three of these patients had a kidney biopsy, the results of which revealed acute phosphate nephropathy. The concomitant use of an ACE inhibitor or ARB was noted in 11 cases, diuretic use in 6 cases, NSAID use in 4 cases; and 1 patient received a contrast dye. Five cases were reported to be life-threatening and 10 resulted in hospitalization. Of these 20 cases, 4 patients required dialysis for an unspecified period of time and 1 patient died from complications of pneumonia. Nine patients were reported to have kidney impairment that continued for at least 2 to 4 weeks. The status of renal impairment is unknown for seven patients.[2]

B. Summary of the Available Published Data

In addition to the FDA AERS cases described previously, there are also reports of acute kidney injury associated with the use of sodium phosphate products for bowel cleansing in the published literature. It is not clear from the reports whether these adverse events were associated with the use of an OTC or prescription product.

The 21 cases of acute phosphate nephropathy cited in the May 2006 Health Alert were identified by Markowitz *et al.* (Ref. 31) from kidney biopsy archives at the Columbia University Renal Pathology Laboratory. From 2000 to 2004, the laboratory processed a total of 7,349 native renal biopsies (transplanted kidneys were excluded), from which 31 cases were retrieved with findings of kidney tubule injury and abundant calcium deposits. Of these 31 cases, 21 had normal calcium levels and met the criteria for acute phosphate nephropathy and had a recent colonoscopy preceded by OSP use. The incidence of acute phosphate nephropathy reported in this study was 0.29 percent (21 of 7,349).

Clinical followups were available for all 21 cases (mean 16.7 months). All 21 cases had increased serum creatinine, an indication of decreased kidney function, (mean 3.9 mg/deciliter (mg/dL)) at a median of 1 month after colonoscopy. Four cases (19 percent) progressed to end stage kidney failure 9 to 18 months (mean 13.8 months) after colonoscopy and required dialysis. These four patients required kidney replacement therapy, and one of the four underwent successful kidney transplant. Although 16 of the remaining 17 cases (94 percent) had a subsequent improvement in kidney function, none returned to baseline creatinine levels and were left with some degree of renal impairment.

The demographic and clinical findings for these 21 cases suggest that age and the co-administration of agents

[1] Outcomes are not mutually exclusive.

[2] Outcomes are not mutually exclusive.

that may reduce kidney circulation are risk factors for the condition. Eighteen of the 21 cases were 51 years or older, and 3 were older than 62. Sixteen of 21 cases (76.2 percent) had a history of hypertension, and 14 of the 16 patients with hypertension (87.5 percent) were being treated with either an ACE inhibitor or ARB for their hypertension. Four cases were taking diuretics and three were on non-steroidal anti-inflammatory drugs (NSAIDs). Five cases were taking more than one of these agents simultaneously. One patient who was 39 years old did not have any of the risk factors noted in the series. Also noteworthy, but of unclear significance, was that 17 (81 percent) of the 21 cases were women.

Subsequent to the report by Markowitz and the 2006 FDA Health Alert, there continued to be reports (Refs. 32 and 33) of acute kidney injury associated with the use of OSP. Ma *et al.* reported cases of acute kidney injury in two patients (75-year old male and an 80-year old female) who had a history of diabetes mellitus (Ref. 32). Baseline serum creatinine was within normal limits, but one patient had microalbuminuria (small amounts of protein in the urine), an early marker of diabetic kidney disease. Acute kidney injury developed within days of receiving OSP bowel prep for colonoscopy. Biopsies were not conducted, but the kidney injury was attributed to OSP because of the temporal relationship to OSP exposure. The male patient required 5 days of dialysis for the acute injury. Both cases resolved, but serum creatinine remained elevated above their baseline values. The authors noted that patients with diabetes often have decreased renal perfusion despite normal serum creatinine and may be at risk for kidney injury with OSP.

Gonlusen *et al.* reported the case of a 56-year-old woman with Crohn's Disease who presented with acute kidney injury approximately 2 weeks after a colonoscopy (Ref. 33). She received two doses of sodium phosphates oral solution (45 ml each dose) prior to the colonoscopy. Her baseline creatinine was 0.8 mg/dL. Serum creatinine was 3.5 mg/dL at the time of presentation. Kidney biopsy showed calcium phosphate deposition in the kidney tubules, that was likely related to the use of sodium phosphates oral solution. The acute kidney injury resolved, but her serum creatinine remained elevated at 1.6 mg/dL 10 months later.

The author reviewed the literature and speculated that there are two types of acute kidney injury associated with OSP. One type is related to the precipitation of calcium phosphate in the kidney tubules, such as the case described in this report. The other type occurs within several days and is associated with severe electrolyte abnormalities and symptoms related to these abnormalities. In the literature reviewed by Gonlusen *et al.,* none of the cases had kidney biopsies. Some patients had residual elevation of creatinine at followup while others had normal creatinine. In some of the reviewed cases, abnormalities of blood urea nitrogen or creatinine may have reflected severe dehydration.

Recently published observational, retrospective studies have attempted to assess the incidence of subclinical (without symptoms) kidney injury after OSP use for bowel preparation (Refs. 34 through 39). It is not entirely clear how the observations in these studies relate to cases of acute phosphate nephropathy that became evident because of the development of clinical symptoms that lead physicians to conduct testing. These studies only assess changes in serum creatinine function in a cohort of people who received OSP for bowel cleansing in an attempt to determine whether lesser degrees of kidney injury occur in a population receiving OSP. Nevertheless, it is useful to review the data in light of our concerns about OSP products for bowel cleansing.

Hurst *et al.* found an increased risk of acute kidney injury that was associated with OSP use in an observational, retrospective, cohort study (Ref. 34). The study included 9,799 subjects over the age of 50 who had a colonoscopy using either OSP or PEG products and had serum creatinine values available within 365 days before and after their procedure. Acute kidney injury was defined as greater than or equal to a 50-percent increase in serum creatinine over the 12 months following colonoscopy.

A total of 114 patients out of 9,799 developed acute kidney injury. Of these, 83 (1.29 percent, 83/6,432) were in the OSP group and 31 (0.92 percent, 31/3,367) were in the PEG group. On univariate analysis, the risk for the developing acute kidney injury was not significantly different between the two groups (odds ratio = 1.41; 95 percent confidence interval 0.93 to 2.13, $p = 0.113$). The PEG group, however, included high-risk subjects who were significantly older and had a higher incidence of diabetes, hypertension, cardiovascular disease, chronic kidney disease, and were more likely to be using a diuretic, ACE inhibitor, or ARB (all $p < 0.05$).

After adjustment for significant covariates and risk factors such as age, diabetes, hypertension, acute cardiovascular disease, ACE inhibitor or ARB use, and other factors suspected to be associated with acute kidney injury, OSP use was found to be associated with an increased risk of acute kidney injury (odds ratio = 2.35, 95 percent confidence interval 1.51 to 3.66, $p < 0.001$). Using a more stringent definition of acute kidney injury (doubling of serum creatinine), an even stronger association between OSP use and acute kidney injury emerged (odds ratios = 3.52, 95 percent confidence interval 1.13 to 10.93, $p = 0.03$). Followup creatinine values in patients with acute kidney injury remained significantly higher, with only 16 percent of cases returning to their previous creatinine levels. The changes in creatinine levels seen in this study were less severe than those seen in the case series compiled by Markowitz *et al.* (Ref. 31). Hurst *et al.* noted, however, that even small increases in creatinine levels have been shown to be associated with increased mortality (Ref. 34).

Brunelli *et al.* evaluated 2,237 subjects who underwent colonoscopy with a baseline serum creatinine of less than 1.5 mg/dL and compared cases that developed acute kidney injury to those who did not in a case-controlled study (Ref. 35). Acute kidney injury was defined as either a 25-percent or a 0.5-mg/dL increase in serum creatinine from baseline (measured within 6 months before the colonoscopy) to 6 months after colonoscopy. There were 116 cases of acute kidney injury with exposure data that were compared with 349 controls. These authors found no association between acute kidney injury and the use of OSP. However, a significant interaction ($p = 0.03$) was found indicating an increased risk for kidney injury from OSP products in patients who were simultaneously receiving ACE inhibitors or ARBs.

Abaskharoun *et al.* (Ref. 36) conducted a retrospective analysis of a database of patients who underwent a colonoscopy at their institution between 2004 and 2005 in order to detect the occurrence of kidney injury in patients who received either OSP or PEG. The study was supported by a manufacturer of OSP. The study included only patients who had undergone two colonoscopy procedures and had serum creatinine measured prior to each procedure. A total of 767 patients were included in the study. OSP was used by 618 patients and PEG was used by 149 patients. The timeframe between the two colonoscopies for the patients ranged from 3 months to 9 years.

Serum creatinine and estimated creatinine clearance, calculated by the Cockroft-Gault equation, were compared between patients receiving OSP and PEG. Chronic renal failure was defined as an abnormal creatinine or creatinine clearance on the repeat measurement. The change in serum creatinine was significantly different (p = 0.005) between OSP (−2.0 micromole/liter (μmol/L)) and PEG (0.9 μmol/L), suggesting that OSP had less of an effect than PEG, but this difference was not felt to be clinically significant by the authors, and there was no significant difference in the number of patients with abnormal second creatinine values between the two groups. In addition, the results were difficult to interpret because:

1. There is a possibility that selection bias eliminated people who developed renal injury from the prep from their first colonoscopy. The study only enrolled patients who used the same bowel prep prior to each colonoscopy. If a patient received OSP or PEG before their first colonoscopy and developed kidney damage as a result, they may not receive the same prep again prior to the second colonoscopy. They would be excluded from this study because they would have had to receive the same prep prior to each procedure. Also, other patients who had only one colonoscopy were not included.

2. There was a wide range of time between measurements of serum creatinine. No analysis was provided that looked at potential differences related to the time between measurements.

3. A greater percent of the PEG patients were receiving antihypertensive therapy, nonsteroidal anti-inflammatory drugs or had a diagnosis of diabetes mellitus, coronary artery disease and hypertension. The patients in the PEG group were older than the OSP patients. Many of these factors have been reported to be risk factors for the development of kidney injury from OSP. Age and use of antihypertensives were found in this study to be predictors of renal failure.

4. Chronic renal failure is not adequately defined and may include many people who did not have significant kidney injury.

5. The study is too small to make conclusions about renal function decline related to OSP.

Khurana *et al.* reported a retrospective study of 286 patients (out of more than 3,000 patients) who had undergone colonoscopy or flexible sigmoidoscopy between January 1998 and February 2005 and used OSP as the bowel prep (Ref. 37). The patients had serum creatinine measured at 6 months and 12 months after the procedure. Baseline serum creatinine had to be less than 1.5 mg/dL and obtained within 6 months prior to colonoscopy. Glomerular filtration rate (GFR), a measure of kidney function, was calculated using a formula from the Modification in Diet in Renal Disease study group (Ref. 38). The formula uses age and serum creatinine in the calculation.

A control group of 125 patients was derived from their database of patients who did not have colonoscopy at any time or who had undergone colonoscopy prior to 1996 and had post-colonoscopy serum creatinine unchanged from prior to colonoscopy. There were no significant differences between the two groups regarding demographic and base line characteristics as well as the use of concomitant medications. The patients were predominately white and female and the mean age was about 68 years. In the study group, 95 percent had hypertension, 45 percent had diabetes, 61 percent were taking an ACE inhibitor and/or ARB and 47 percent were taking diuretics, which were not significantly different as compared to the control group.

Serum creatinine increased by 0.09 mg/dL in the OSP group and 0.02 mg/dL in the control group at 6 months ($p < .001$; 2 sample t test). At 1 year, the change from baseline was 0.12 mg/dL for OSP and 0.04 mg/dL for the controls ($p < .001$; 2 sample t-test). Because calculated GFR used serum creatinine, similar trends were seen when GFR values were compared between groups. The authors concluded that OSP is associated with a decline in GFR in elderly patients with normal creatinine.

It is difficult to make definitive conclusions from this study for the following reasons:

1. Less than one-tenth of the patients who had a colonoscopy were included in the study. The study size is small and sampling may not be random.

2. The control group included patients who had the same creatinine after a previous colonoscopy. This could introduce a selection bias because it picked people with stable renal function. The number of these patients in the control group, which included patients without colonoscopy, is not provided.

3. The majority of subjects had conditions that may predispose them to kidney injury (*e.g.* hypertension) or were receiving drugs that may make them susceptible to toxicity with OSP. It is also unclear how these findings can be extrapolated to people without risk factors for kidney injury.

4. Serum creatinine and calculated GFR are not adequate surrogates to detect small changes in glomerular filtration rate as a function of time.

5. It would have been helpful to describe the number of patients who exceeded some percent increase in creatinine or some absolute value. The upper range of creatinine is greater than 3.0 mg/dL at 1 year in both groups.

This study, however, raises important issues that need to be addressed. Patients will undergo multiple colonoscopies over the years, and it is important to understand whether exposure to OSP can lead to small amounts of kidney damage that may be cumulative after repeated exposure.

A retrospective study by Russman *et al.* compared the risk of kidney impairment in patients who used OSP or PEG prior to colonoscopy based on clinical and electronic records from the Henry Ford Health System (HFHS) in Detroit, MI (Ref. 39). The base study population (7,897 patients) consisted of patients who had a colonoscopy at the HFHS Detroit Center gastroenterology clinic between November 1999 and October 2005. Patients were included if they had a creatinine determination 12 months prior to and 6 months after colonoscopy and a GFR greater than or equal to 60 (milliliter per minute (mL/min). Patients with preexisting kidney disease within 12 months of colonoscopy were excluded from further evaluation based on prespecified criteria (*e.g.,* undergoing dialysis, history of kidney transplant, acute as well as chronic renal failure, or GFR < 60 mL/min). Impaired renal function after colonoscopy was defined as a GFR of less than 60 mL/min and a decrease of at least 10 mL/min from the last value before colonoscopy, and/or at least a two-fold increase in creatinine from baseline within 6 months after colonoscopy. Patients with an identifiable, likely cause of renal impairment that was not clearly related to OSP or PEG use were excluded.

Of a total of 2,352 eligible patients, 269 used PEG and 2,083 used OSP. Compared to the patients receiving OSP, those receiving PEG were on average older (≥ 65 years of age), had a higher prevalence of heart failure, were using diuretics or an ARB, were more likely to have an inpatient colonoscopy procedure, and, in general, were more likely to be hospitalized during 12 months prior to the colonoscopy. The proportion of patients with mild renal impairment (GFR between 60 and 90 mL/min) at baseline was similar between the OSP and PEG groups (49 and 45 percent, respectively).

A total of 88 patients were identified as having renal impairment after colonoscopy. The proportion of patients with renal impairment after colonoscopy was similar between OSP users (79/2083 (3.8 percent)) and PEG users (9/269 (3.3 percent)). Of these 88 cases, 50 patients had a GFR decrease of 20 mL/min, and 13 had at least a twofold increase in creatinine after colonoscopy. In 21 out of those 88 cases, GFR remained < 60 mL/min 6 months after colonoscopy, and out of these 17 had used OSP and 4 had used PEG. The relative risk (RR) estimate for renal impairment comparing OSP and PEG was 1.13 (95 percent confidence interval 0.58–2.23) without adjustment, and the Odds Ratio after multivariate adjustment was 1.14 (0.55–2.39). Significant risk factors were those identified by earlier studies and include age greater than or equal to 65, African American race, low baseline GFR, hypertension and use of ACE inhibitors, ARBs, or thiazide diuretics. The authors of the study concluded that in patients without preexisting kidney disease, the risk of kidney impairment after colonoscopy appears to be similar between OSP and PEG users.

It is difficult to make definitive conclusions from this study for the following reasons:

1. A significantly greater proportion of OSP users who underwent colonoscopy were excluded from the study, which may introduce a potential selection bias.

2. There is a wide range of time between measurements of serum creatinine. Although the authors claimed that adjustment for differences in the latency time from colonoscopy to creatinine determination did not alter the risk estimates, analysis of such data was not provided.

3. PEG users tended to have a higher prevalence of co-morbid conditions (*e.g.,* congestive heart failure, liver cirrhosis) or used agents that potentially impair kidney perfusion.

4. Two different criteria were used for identification of patients with renal impairment post colonoscopy.

There are limitations in the design of all of the five studies discussed previously, such as the lack of a consistent definition of acute kidney injury and the exclusion of patients with baseline serum creatinine values above a threshold value. As a consequence, no definitive conclusions can be drawn from these studies, and additional studies are needed to further assess subclinical changes in kidney function.

C. Consensus Statement on Bowel Preparation Before Colonoscopy

In 2006, a Joint Task Force from the American Society of Colon and Rectal Surgeons (ASCRS), the American Society for Gastrointestinal Endoscopy (ASGE), and the Society of American Gastrointestinal and Endoscopic Surgeons (SAGES) issued a consensus statement on bowel preparation before colonoscopy (Ref. 40). The task force performed a critical scientific review of the available data, which included 21 randomized, controlled trials in the published literature. The scope of the task group consensus statement included not only the customary dose of OSP but also other treatment modalities for bowel preparation, including PEG. Both oral solutions and the tablet formulations of OSP were assessed.

In their consensus statement the Task Force acknowledges the risks associated with the customary dose of OSP for bowel cleansing. The Task Force drew the following conclusions based on its evaluation of the data:

1. The use of OSP for bowel preparation prior to a colonoscopy is associated with abnormalities in serum electrolytes and altered extracellular fluid volume, which can cause significant losses of both fluid and electrolytes in the stool, resulting in volume contraction and dehydration.

2. Rarely adverse events such as nephrocalcinosis with acute kidney failure have occurred after use of OSP.

3. OSP use has been shown to cause elevated blood urea nitrogen levels, decreased exercise capacity, increased plasma osmolality, hypocalcemia, and significant hyponatremia and seizures.

4. Although usually asymptomatic, hyperphosphatemia is seen in as many as 40 percent of healthy patients completing OSP preparations, and hypokalemia developed in as many as 20 percent of patients using OSP preparations.

The Task Force advised physicians to select a preparation for each patient based on the safety profile of the agent and the overall health of the patient, their comorbid conditions and currently prescribed medications. They further advised that in certain circumstances such as bowel preparation in children, the elderly, patients with renal insufficiency, and those with hypertension taking an ACE inhibitor or an ARB, it may be advisable to adhere to PEG-based solutions because of the risk of occult physiologic disturbances that may contraindicate the use of sodium phosphates regimens.

D. FDA's Tentative Conclusions on the Safety of Nonprescription Sodium Phosphate Oral Solutions for Bowel Cleansing

FDA has tentatively concluded that the customary dose of OTC sodium phosphate salts for bowel cleansing (*i.e.,* two 45-mL doses taken 12 hours apart or a 45-mL dose followed by a 30-mL dose of sodium phosphates oral solution 10 to 12 hours later) in an OTC setting based on professional labeling in an OTC monograph poses an unacceptable risk of serious adverse events. Some patients have experienced sudden and severe acute kidney failure which may require kidney dialysis, while others have had a less serious course that resolves with minimal intervention. The outcome has varied from complete recovery to, in rare instances, death. Some patients may have residual kidney damage and may never return to the kidney function present prior to OSP use.

Some of the retrospective studies that have reviewed the serum creatinine of large numbers of patients who underwent bowel preparation for colonoscopy at the customary OSP doses suggest that the percent of cases leading to serious injury with symptoms is relatively rare. However, there is no accurate estimate of the incidence of acute kidney injury in patients receiving these doses of OSP for bowel cleansing. Some studies have identified populations who appear to be at risk, but data from prospective studies are needed to better define the risk of acute kidney injury in patients using OSP at the current doses as preparation for colonoscopy and to determine the risk factors that may predispose patients to such injury.

The study by Hurst also raises questions about the possible effects of small changes in serum creatinine that may occur after OSP use at the customary doses for bowel cleansing (Ref. 34). This is an important question that needs to be addressed. There are about 14 million screening colonoscopies per year in the United States., for which an estimated 50 percent will use OSP for bowel cleansing (Ref. 31). Given the magnitude of the exposure, the possibility of low grade declines in GFR after exposure to OSP is troubling when one considers that many patients undergo colonoscopies more than once in their lifetime and the damage that occurs with every exposure could be cumulative for some individuals. Other studies have not supported the findings of Hurst. Thus, it is important that this issue be addressed with clinical trials

using more exact measurements of glomerular filtration rate. For these reasons, FDA has required the NDA holder of prescription OSP products to conduct prospective, randomized, active-controlled clinical trials to determine the absolute and relative risk of kidney injury (including acute phosphate nephropathy) following the use of these products.

Further, because of continuing reports of acute kidney injury associated with the prescription and customary dose of OTC OSP products for bowel cleansing, despite repeated educational efforts by FDA and the detailed professional labeling provided by a drug manufacturer for these products, we have tentatively concluded that OSP for bowel cleansing at the currently used doses poses a serious risk of adverse events in some patients. Therefore, additional measures are needed to manage the risk posed by this use of OSP products for bowel cleansing to assure that the benefits outweigh the potential risks. The need for these additional measures precludes the continued use of the current regimen of sodium phosphates oral solution for bowel cleansing under the professional labeling of an OTC monograph.

Under the current professional labeling provisions of the 1985 TFM published on January 15, 1985 (50 FR 2124), consumers rely on their healthcare provider to provide information on the safe use of the sodium phosphates oral solution for bowel cleansing. This approach has not been sufficient to manage the risk that has been associated with the customary dose of OTC sodium phosphates oral solution for bowel cleansing. We believe that consumers need to have detailed information in the form of patient labeling and information from a physician regarding the safe use of the product. Risk information in patient labeling could affect patients' decisions to use these products, and thus help prevent serious adverse effects. This kind of patient labeling (*see* 21 CFR 201.57 and 21 CFR part 208) cannot be accomplished with professional labeling found in an OTC monograph. Professional labeling is labeling provided only to healthcare professionals who direct patients to use OTC products in ways that differ from the consumer labeling for these products. Manufacturers marketing OTC products under the 1985 TFM cannot provide consumers with labeling information on the OTC package related to those indications or uses that are not part of the drug facts labeling allowed under the 1985 TFM. For all of these reasons, we are proposing in this document that the professional labeling for bowel cleansing use be removed from the tentative final monograph because of our safety concern with the bowel cleansing use of sodium phosphate products.

We also believe that the safe use of OSP as presently used for bowel cleansing requires the continuing involvement of a doctor to monitor its effects on kidney function. Section 503(b)(1) of the FD&C Act establishes the standards under which the marketing of a drug must be limited to prescription. Among these is the need for collateral measures for the safe use of the product and the need for the involvement of a licensed practitioner to ensure the safe use of the product. For the reasons already given, the customary dose of OSP solution for bowel cleansing meets the statutory definition of a prescription product. Thus, in this document FDA proposes to classify OTC sodium phosphate salts, singly or in combination with each other, as not GRAS (*i.e.,* nonmonograph) for the professional labeling indication proposed in the 1985 TFM, *i.e.,* "For use as part of a bowel cleansing regimen in preparing the patient for surgery or for preparing the colon for x-ray endoscopic examination." This proposed rule would amend § 310.545 to include sodium phosphate salts for bowel cleansing use, as described in § 334.80 of the 1985 TFM, as nonmonograph.

Screening colonoscopy can lead to the early detection of colon cancer and polyps, which, if not removed, can progress to cancer. Early detection of colon cancer can result in more effective treatment and a survival advantage. Inadequate preparation for colonoscopy can lead to missed lesions. OSP products have been shown to be effective in cleansing the colon, thereby allowing better visualization of cancers and polyps. FDA believes it is important to have multiple options available for bowel cleansing because no single product is tolerated by all individuals. It is important, however, to make sure that the risk for serious injury is very low and the appropriate populations are identified who can use these products safely.

IV. FDA's Tentative Conclusions on the Safety and Effectiveness of Other Doses of Sodium Phosphates Oral Solution for Bowel Cleansing

FDA has previously acknowledged the effectiveness of the bowel cleansing regimen that is currently the standard of practice for OTC sodium phosphates oral solution, *i.e.,* 60-g sodium phosphate administered in two 45-mL doses of sodium phosphates oral solution taken 10 to 12 hours apart (Ref. 14). However, the available data raise serious concerns about the safety of this regimen.

There are some data that suggest a lower sodium phosphate dose may be similar in effectiveness to the regimen currently in use. An unpublished study comparing the effectiveness of sodium phosphates oral solution at two dose levels, the standard 2 x 45-mL dose (60 g sodium phosphate) and a reduced 2 x 30-mL dose (37 g sodium phosphate), with PEG solution was included in a citizen petition from a manufacturer of sodium phosphate laxative products (Ref. 18). The study, PS–9902, was a randomized, single-blind, parallel group design. The two regimens were administered as divided doses 10 to 12 hours apart. A total of 238 subjects were randomized to one of the three treatments. Seventy-four subjects took the 2 x 45-mL dose, and 75 subjects took the 2 x 30 mL dose. There were 73 subjects who took PEG. The study excluded all patients with current labeling contraindications to OSP use and all patients for whom use is allowed with caution.

The manufacturer's evaluation of physicians' assessments of bowel preparation indicated no statistically significant differences between the 2 x 30-mL sodium phosphates oral solution group and the PEG group for any of the effectiveness endpoints: Residual stool, stool consistency, and bowel wall visualization parameters. Bowel cleansing with the two 45-mL doses was found to be superior to the lower dose OSP regimen and PEG. The observed electrolyte changes and side effects were milder with the two 30-mL doses of OSP compared to the two 45-mL dose. Elevation in serum sodium was the only significant electrolyte change between the OSP groups. Four patients on the two 45-mL dose regimen had post-prep sodium levels that exceeded the upper limit of normal but remained below 150 millimole/Liter.

While the results of this study are worth noting, they are not sufficient to demonstrate the safety and effectiveness of the reduced phosphate regimen. It is noteworthy that 32 percent (23/73) of the PEG subjects reported that they did not complete the treatment regimen. This finding may have reduced the efficacy found in the PEG group, thereby minimizing treatment effect differences between PEG and the low dose phosphate regimen. There were also irregularities in randomization. Ten patients were excluded following randomization, because they were randomized before all inclusion criteria were verified. In addition, at one study

site, six patients were randomized out of order and did not receive the treatments assigned by the randomization protocol. Thus, the study results can not be considered a conclusive demonstration of the effectiveness of these products. In addition, while the electrolyte changes and side effects were milder with the two 30-mL doses of sodium phosphates oral solution, the number of subjects exposed to the proposed lower dose regimen (79 subjects) is too small to allow any conclusions about the safety of the lower dose regimen.

V. Summary of Significant Changes From the 1985 Proposed Rule for OTC Laxative Drug Products

1. FDA is classifying sodium phosphate salts described in § 334.16(d), (e) and (f), as nonmonograph and removing them as acceptable active ingredients for the use as a bowel cleansing agent described in § 334.80(a)(2).

2. FDA is removing the warning in § 334.80(b)(2) for sodium phosphate salts. The warning will be revised and included in a proposed rule to be published at a future date.

VI. Proposed Effective Date

The existing evidence is inadequate to establish the safety of OTC sodium phosphate salts (dibasic sodium phosphate, monobasic phosphate and dibasic sodium phosphate/monobasic sodium phosphate (sodium phosphates) solution) for professional use as a bowel cleansing preparation prior to surgery or endoscopic examination. Accordingly, sodium phosphate salts cannot be considered GRAS for OTC use for bowel cleansing.

If this proposal becomes a final rule, the conditions under which drug products subject to this rule are not GRASE and are misbranded will be effective 30 days after the date of the final rule's publication in the **Federal Register**. On or after that date, any OTC laxative products containing dibasic sodium phosphate or monobasic phosphate and dibasic sodium phosphate/monobasic sodium phosphate (sodium phosphates) marketed for bowel cleansing will be misbranded and will require an approved NDA for bowel cleansing use and marketing. Any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the final rule must be in compliance with the final rule, regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule only affects labeling provided to healthcare professionals for the indication of bowel cleansing and does not affect the marketing of sodium phosphates oral solution for consumer use as a laxative for the relief of occasional constipation, the agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

The purpose of this proposed rule is to remove the professional labeling relating to the use of sodium phosphates oral solution laxatives for bowel cleansing in the 1985 TFM (50 FR 2124 at 2157). Professional labeling is information directed to health professionals who prescribe, administer, or dispense medications, and may not be included in labeling directed to the consumer. This proposed rule amends § 334.80 to remove the bowel cleansing indication for sodium phosphates oral solution laxatives based on concerns about serious adverse reactions associated with the use of these OTC drug products in preparation for colonoscopy and x-ray before surgery.

A. Background

FDA has taken a number of measures to mitigate the risk of serious adverse events associated with the use of OSP products in preparation for colonoscopy and x-ray endoscopic examination. As discussed in the preamble, FDA has limited the acceptable container sizes that can be marketed and added warnings and direction statements to OTC sodium phosphates solutions marketed for laxative and to healthcare professionals for bowel cleansing use. Separate from this proposed rule, the agency has also made several attempts to educate and alert both healthcare professionals and consumers about potential risks associated with customary dose of OSP products for bowel cleansing. Despite these measures, FDA's AERS has continued to receive reports of acute kidney injury that have been associated with the customary dose of OSP products for bowel cleansing.

For this reason, on December 12, 2008, FDA took steps to limit the marketing of OSP products for bowel cleansing to prescription only and to increase the prominence of risk information by requiring a boxed warning on prescription OSP products (Ref. 1). In addition, the continued marketing of prescription OSP products will require the development of a risk evaluation and mitigation strategy that includes the development of a Medication Guide and a communication strategy targeted at healthcare providers who are likely to prescribe OSP products. FDA has also instructed the holders of NDAs for OSP products to conduct prospective clinical trials to assess the risk of acute kidney injury in patients using sodium phosphate products for bowel cleansing and to better define the risk factors that predispose patients to such injury. FDA has taken these steps in an attempt to increase the level of risk communication for these products and thereby reduce the incidence of adverse events that has been associated with these products.

B. Need for the Proposed Rule

This proposed rule is consistent with the Agency's determination that the customary dose of OSP products for bowel cleansing (*i.e.,* approximately 60 g of sodium phosphates taken as two 45-mL doses 12 hours apart or approximately 50 g of sodium phosphates taken as a 45-mL dose followed by a 30-mL dose 12 hours later) poses a serious risk to some individuals and that the marketing of

these products for bowel cleansing should be limited to prescription only. In this document FDA proposes to classify OTC sodium phosphate salts, singly or in combination with each other, as not GRAS (*i.e.,* nonmonograph) for bowel cleansing. Furthermore, FDA is proposing to remove professional labeling for bowel cleansing use from the monograph. Manufacturers of OTC OSP laxative products would no longer be able to promote the use of these products to healthcare professionals for bowel cleansing use. Consequently, the marketing of sodium phosphates oral solution marketed under an OTC drug monograph would be limited to laxative use at a lower sodium phosphates dose to relieve occasional constipation.

C. Impact of the Proposed Rule

Executive Order 12866 and OMB Circular A–4 direct agencies to consider and provide a description of any important distributional effects that might be attributed to a regulation, where applicable. To the extent that OTC OSP products for bowel preparation remain on the market, this rule would shift those sales to prescription products only. Any such shift in sales represents a transfer payment between manufacturers within the industry and is not a social cost of this rule. The agency believes that most of this transfer has already occurred through voluntary withdrawal of OTC products by their manufacturers.

An informal in-store review of several national drug and mass merchandise stores found that there were no OTC liquid OSP products on those store shelves. Pharmacists indicated that OSP liquid products were removed from the shelves in response to information from FDA. Therefore, the agency believes that any shift in sales from OTC to prescription products for bowel cleansing that would have been attributed to this rule most likely has already occurred.

According to proprietary data from A.C. Nielsen, annual retail sales for OSP products totaled about $30 million in 2006. The vast majority of these sales are attributed to one manufacturer. That manufacturer has already voluntarily removed its OSP laxative products from the shelves. We believe that other suppliers have similarly removed their products. The agency requests specific comments on this assumption.

To the extent that any OSP products for laxative use might remain on the market, there would be no relabeling or reformulation costs attributed to this rule. If, however, manufacturers have chosen to improperly label their OSP products with a bowel cleansing indication, these manufacturers will incur the cost of relabeling to remove the bowel cleansing use from their labels. These costs would be incurred without this rule, because professional uses of OTC drugs are not properly included in labeling directed to consumers.

We analyzed proprietary data from SDI Health on the total number of retail prescriptions dispensed for bowel preparation products from March 2004 through February 2009. We included PEG products and OSP products that are considered alternatives to the OTC OSP products for bowel cleansing. The number of prescriptions for PEG products has grown significantly over this time period, whereas the number of OSP products remained relatively constant over most of this period and began to decline in late 2008. The average annual growth rate for all prescription bowel preparation products was 17 percent from 2006 to 2008. From 2006 through the third quarter of 2008, the monthly share of sodium phosphate prescriptions dispensed for bowel preparation was about 13 to 15 percent of total prescriptions, but declined to a monthly low of 7 percent by February 2009. This apparent decline in dispensed prescription sodium phosphate products may be a market response to recent agency actions, including the boxed warning requirement, that are separate from this rule. However, it is too soon to determine market changes. Nonetheless, the data on the number of prescriptions dispensed suggest that prior agency actions may have had a dampening market effect on the use of OSP products for bowel preparation.

D. Benefits of the Proposed Rule

Section III.A of this document presents data on the reports of serious adverse events associated with prescription and OTC products containing sodium phosphates for bowel cleansing. More than 100 adverse events have been reported that are associated with the customary dose of OSP products as presented in section III. A of this document. Although these serious events are rare, the public health consequences can be substantial. Acute phosphate nephropathy that has been associated with the customary dose of OSP for bowel cleansing can result in permanent impairment of kidney function that ultimately may require chronic dialysis or kidney transplant, and may result in long term renal failure and, in rare instances, death.

The economic consequences of this severity of renal impairment are significant. The cost of hospitalization resulting from acute renal failure without dialysis has been estimated at $22,251 (51 FR 77314 at 77344, December 26, 2006). Recent analyses have reported Medicare payments for a year's treatment of a dialysis patient of about $67,000. Employer group health insurance costs are much higher at $180,000 per year (Ref. 41).

Estimates of the cost of kidney transplants also vary. Associated medical costs for transplants average about $102,000 in the year of the transplant (Ref. 42). The mean cost of hospitalization for a kidney transplant procedure was $128,000 in 2006 (Ref. 43). In addition, patients with kidney transplants require immunosuppressive drugs for years after their transplant.

We believe, based on the available data, that sodium phosphates solution marketed under an OTC drug monograph for bowel cleansing may be a significant cause of severe adverse events. However, we note that there is uncertainty about the baseline risk of serious adverse events associated with customary dose of OSP products (for both OTC and prescription uses). It is not possible to predict a specific level of reduction in the incidence of these serious adverse events that might be attributable to limiting OSP products for bowel cleansing use to prescription drug use. Moreover, to the extent that OSP products have been voluntarily withdrawn from the market, this rule would not have an impact on the incidence of these serious adverse events.

E. Alternatives

The agency considered but rejected several alternatives: (1) Requiring additional (OTC or professional) labeling that describes potential adverse effects, the subpopulations at greatest risk, and detailed directions about hydration, (2) a longer implementation period for this rule if finalized, and (3) product withdrawal, including prescription use. We do not believe that the first two alternatives to the proposed regulation would be adequate to provide for the safe use of OTC sodium phosphates oral solution for bowel cleansing (*e.g.,* preparation for colonoscopy). Various attempts at conveying the risk associated with OTC sodium phosphates oral solution products, including detailed professional labeling describing potential adverse events and at risk populations (Ref. 29) by a manufacturer of an OTC sodium phosphates oral solution product have not been successful in reducing the number of serious adverse events attributed to these products. The agency also

considered but rejected a longer implementation period for this proposed rule if finalized, because of the overriding safety considerations. We rejected the third alternative, to withdraw the product, because OSP has been demonstrated to be effective for bowel cleansing, and we believe that it is important to continue to have multiple options available for bowel cleansing because no single product is tolerated by all individuals.

F. Impact on Small Businesses

The Small Business Administration (SBA) defines an entity as small in the pharmaceutical manufacturing industry if the business has fewer than 750 employees. Over 90 percent of manufacturers in the OTC pharmaceutical industry are classified as small. To the extent that there continue to be manufacturers of OSP products for bowel preparation that remain on the market, those sales would be shifted to prescription products. This is a transfer payment and not a social cost of this rule. The agency believes that most of this impact has already occurred with manufacturers voluntarily withdrawing products from the market prior to this rule.

We estimate that there are about 10 manufacturers that could be affected by this proposed rule and that all of them are small businesses. The economic impact on any remaining individual firms will vary based on the amount of lost production and lost sales revenue that is derived from sales of the OSP products for bowel cleansing. Without knowing the volume of OTC OSP sales that can be attributed to this use, it is difficult to estimate the impact of this proposed rule on small business entities. As noted above, a major manufacturer of OTC OSP labeled for professional use for bowel cleansing has already voluntarily withdrawn its bowel cleansing products from the market. The remaining suppliers may have done the same.

Given the small number of manufacturers of these products, we believe that it is unlikely that this proposed rule will have a significant economic impact on a substantial number of small entities. Nonetheless, the agency requests detailed comments on small businesses impacts. The proposed rule will not require any new recordkeeping and no additional professional skills are needed.

This analysis shows that this proposed rule is not economically significant under Executive Order 12866. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Reform Act does not apply to this proposed rule because it would not result in an expenditure in any 1 year by State, local, and Tribal governments in the aggregate, or by the private sector of $135 million.

FDA invites public comment regarding any significant economic impact that this proposal would have on affected manufacturers of sodium phosphates oral solutions. Comments regarding the impact of this proposal should be accompanied by appropriate documentation. FDA will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to any final rule.

VIII. Paperwork Reduction Act of 1995

This proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." The sole statutory provision giving preemptive effect to the proposed rule is section 751 of the FD&C Act (21 U.S.C. 379r).

We believe that the preemptive effect of this proposed rule, if finalized, would be consistent with Executive Order 13132. Through the publication of this proposed rule, we are providing notice and an opportunity for State and local officials to comment on this rulemaking.

XI. References

The following references are on display in the Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, under Docket No. FDA–1978–N–0021 (formerly Docket No. 78N–036L) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Document Id. FDA–2007–P–0345–0003, Federal Dockets Management System.

2. Document Id. FDA–2007–P–0345–0005, Federal Dockets Management System.

3. Comment No. CP8, Docket 1978N–036L, Division of Dockets Management.

4. Comment No. SUP5, Docket No. 1978N–036L, Division of Dockets Management.

5. Comment No. LET41, Docket No. 1978N–036L, Division of Dockets Management.

6. Document Id. FDA–1978–N–0021–0032–0036, Federal Dockets Management System.

7. Comment No. CP14, Docket No. 1978N–036L, Division of Dockets Management.

8. Comment No. SUP8, Docket No. 1978N–036L, Division of Dockets Management.

9. Comment No. AMD10, Docket No. 1978N–036L, Division of Dockets Management.

10. Comment No. LET71, Docket No. 1978N–036L, Division of Dockets Management.

11. Comment No. SUP11, Docket No. 1978N–036L, Division of Dockets Management.

12. Comment No. SUP10, Docket No. 1978N–036L, Division of Dockets Management.

13. Comment No. C146, Docket No. 1978N–036L, Division of Dockets Management.

14. Comment No. LET109, Docket No. 1978N–036L, Division of Dockets Management.

15. Comment No. PDN4, Docket No. 1978N–036L, Division of Dockets Management.

16. Comment No. CP1, Docket No. 00P–1472, Division of Dockets Management.

17. Comment No. PDN1, Docket No. 00P–1472, Division of Dockets Management.

18. Comment No. CP28, Docket No. 1978N–036L, Division of Dockets Management.

19. Comment No. LET204, Docket No. 1978N–036L, Division of Dockets Management.

20. Document Id. FDA–1978N–0021–0031, Federal Dockets Management System.

21. Comment No. C207, Docket No. 1978N–036L, Division of Dockets Management.

22. Comment No. C208, Docket No. 1978N–036L, Division of Dockets Management.

23. Comment No. SUP18, Docket No. 1978N–036L, Division of Dockets Management.

24. FDA Science Background Paper: "Safety of Sodium Phosphates Oral Solution" September 17, 2001 in OTC Volume 09OSPPR.

25. FDA Science Background Paper: "Acute Phosphate Nephropathy and Renal Failure Associated with the Use of Oral Sodium Phosphate Bowel Cleansing Products," May 2006 in OTC Volume 09OSPPR.

26. FDA Information for Healthcare Providers: Oral Sodium Phosphate Products for Bowel Cleansing, May 2006 in OTC volume 09OSPPR.

27. FDA Alert: Oral Sodium Phosphate (OSP) Products for Bowel Cleansing (marketed as Visicol and OsmoPrep, and oral sodium phosphate products available without a prescription), December 11, 2008 in OTC volume 09OSPPR.

28. FDA Information for Healthcare Professionals: Oral Sodium Phosphate (OSP) Products for Bowel Cleansing (marketed as Visicol and OsmoPrep, and oral sodium phosphate products available without a prescription), December 11, 2008, in OTC volume 09OSPPR.

29. Professional Labeling for Fleets Phosphasoda in OTC volume 09OSPPR.

30. Khurana, A. *et al.,* "Acute Phosphate Nephropathy," *Journal of the American Society of Nephrology,* 17: 163A, 2006.

31. Markowitz, G. S. *et al.,* "Acute Phosphate Nephropathy Following Oral Sodium Phosphate Bowel Purgative: An Unrecognized Cause of Chronic Renal Failure," *Journal of the American Society of Nephrology,* 16:3389–3396, 2005.

32. Ma, R. C. *et al.,* "Acute Renal Failure Following Oral Sodium Phosphate Bowel Preparation in Diabetes," *Diabetes Care,* January: 30(1):182–3. 2007.

33. Gonlusen, G. *et al.,* "Renal Failure and Nephrocalcinosis Associated with Oral Sodium Phosphate Bowel Cleansing: Clinical Patterns and Renal Biopsy Findings," *Archives of Pathology and Laboratory Medicine,* January: 130(1):101–6, 2006.

34. Hurst, F. P. *et al.,* "Association of Oral Sodium Phosphate Purgative Use with Acute Kidney Injury," *Journal of the American Society of Nephrology,* 18:1–6, 2007.

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37. Khurana A., L. McLean, S. Atkinson, and C. J. Foulks, "The Effect of Oral Sodium Phosphate Drug Products on Renal Function in Adults Undergoing Bowel Endoscopy," *Archives of Internal Medicine,* March 24:168(6):593–7, 2008.

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39. Russman, S. *et al.,* "Risk of Impaired Renal Function After Colonoscopy: A Cohort Study in Patients Receiving Either Oral Sodium Phosphate or Polyethylene Glycol," *American Journal of Gastroenterology,* 102:2655–2663, 2007.

40. Wexner, S.D. *et al.,* "A Consensus Document on Bowel Preparation Before Colonoscopy," prepared by a task force from the American Society of Colon and Rectal Surgeons (ASCRS), the American Society for Gastrointestinal Endoscopy (ASGE), and the Society of American Gastrointestinal and Endoscopic Surgeons (SAGES), *Gastrointestinal Endoscopy;* 63:894–909, 2006.

41. Just, P. M. *et al.,* "Reimbursement and Economic Factors Influencing Dialysis Modality Choice around the World," *Nephrology Dialysis Transplantation,* 23(7):2365–2373, 2008.

42. St. Peter, W., "Introduction: Chronic Kidney Disease: A Burgeoning Health Epidemic," *Journal of Managed Care Pharmacy,* 13(9):S2–S5, 2007.

43. Agency for Healthcare Research and Quality, HCUPnet National and regional estimates on hospital use for all patients from the HCUP Nationwide Inpatient Sample (NIS) (2006), data accessed March 11, 2009.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 334

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310 and 334 (as proposed in the **Federal Register** of January 15, 1985 (50 FR 2124)), October 1, 1986 (51 FR 35136), September 2, 1993 (58 FR 46589), March 31, 1994 (59 FR 15139), September 2, 1997 (62 FR 46223), May 21, 1998 (63 FR 27886), June 19, 1998 (63 FR 33592), March 24, 2004 (69 FR 13765), November 29, 2004 (69 FR 69278), be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by redesignating paragraph (a)(12)(ii) as paragraph (a)(12)(ii)(A), by adding paragraph (a)(12)(ii)(B), by revising paragraph (d) introductory text and paragraph (d)(1), and by adding paragraph (d)(53) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(12) * * *

(ii) * * *

(B) Saline laxatives—Approved as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

Dibasic sodium phosphate, monobasic sodium phosphate, and sodium phosphates (dibasic sodium phosphate monobasic sodium phosphates in a solution dosage form administered as 59.4 grams (g) of sodium phosphates taken in two 45-milliter (mL) doses 12 hours apart or 49.5 g of sodium phosphates taken as a 45-mL dose followed by a 30-mL dose 12 hours later) for use as part of a bowel cleansing regimen in preparing the patient for surgery or for preparing the colon for x-ray endoscopic examination.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(53) of this section.

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3)(i), (a)(4)(i), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(10)(i) through (a)(10)(iii), (a)(12)(i)(A), (a)(12)(ii)(A), (a)(12)(iii), (a)(12)(iv)(A), (a)(14) through (a)(15)(i),

(a)(16) through (a)(18)(i)(A), (a)(18)(ii) (except as covered by paragraph (d)(22) of this section), (a)(18)(iii), (a)(18)(iv), (a)(18)(v)(A), and (a)(18)(vi)(A) of this section.

* * * * *

(53) [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], for products subject to paragraph (a)(12)(ii)(B) of this section.

PART 334—LAXATIVE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 334 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 334.80 [Amended]

4. Section 334.80 as proposed on January 15, 1985 (50 FR 2124), is amended by removing "sodium phosphate/sodium biphosphate identified in § 334.16(d)" from paragraph (a)(2), and by removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2).

Dated: February 3, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3091 Filed 2–10–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–146097–09]

RIN 1545–BJ01

Guidance on Reporting Interest Paid to Nonresident Aliens; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking; notice of a public hearing; and withdrawal of previously proposed rulemaking.

SUMMARY: This document contains corrections to notice of proposed rulemaking; notice of a public hearing; and withdrawal of previously proposed rulemaking (REG–146097–09) that was published in the **Federal Register** on Friday, January 7, 2011 (76 FR 1105). The proposed regulations provide guidance on the reporting requirements for interest on deposits maintained at U.S. offices of certain financial institutions and paid to nonresident alien individuals.

FOR FURTHER INFORMATION CONTACT: Kathryn Holman at (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking; notice of a public hearing; and withdrawal of previously proposed rulemaking that is the subject of this document is under section 6049 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking; notice of a public hearing; and withdrawal of previously proposed rulemaking (REG–146097–09) contains errors that are misleading and are in need of clarification.

Correction to Publication

Accordingly, the notice of proposed rulemaking; notice of a public hearing; and withdrawal of previously proposed rulemaking which is the subject of FR Doc. 2011–82 is corrected as follows:

On page 1105, in the preamble, column 3, under the caption **DATES**, line 4, the language "public hearing scheduled for April 28," is corrected to read "public hearing scheduled for April 27,".

On page 1107, in the preamble, column 2, under the paragraph heading "Comments and Public Hearing", line 14, the language "for April 28, 2011, beginning at 10 a.m." is corrected to read "for April 27, 2011, beginning at 10 a.m."

LaNita VanDyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2011–2922 Filed 2–10–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 181

[Docket No. USCG–2007–29236]

Hull Identification Numbers for Recreational Vessels

AGENCY: Coast Guard, DHS.

ACTION: Follow-up to request for comments.

SUMMARY: The Coast Guard announces its decision to not initiate a rulemaking addressing an expanded hull identification number (HIN). The Coast Guard's decision-making process included consideration of comments submitted in response to its request for comments on the costs and benefits of expanding the existing 12-character HIN in order to provide additional information identifying vessels.

ADDRESSES: The docket for this action is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting "USCG–2007–29236" in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or e-mail Mr. Jeffrey Ludwig, Coast Guard; telephone 202–372–1061, e-mail *Jeffrey.A.Ludwig@uscg.mil.* If you have questions on viewing material in the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: On March 17, 2008, we published a request for public comments on the costs and benefits of expanding the existing 12-character HIN in order to provide additional information identifying vessels (73 FR 14193). The notice specifically requested comments on: (1) The expected benefits and costs of an expanded HIN; (2) the manner in which the Coast Guard should exempt small entities and builders of high-volume, low-cost vessels; (3) the estimated collection of information burdens to vessel manufacturers if the current 12-character HIN regulations were revised to require additional characters; and (4) possible alternatives to an expanded HIN. The Coast Guard also sought specific data to support its decision-making process about whether to initiate a rulemaking addressing an expanded HIN.

In response to the request for comments, we received 29 comments. The Coast Guard has decided not to initiate a rulemaking addressing an expanded HIN based on consideration of the comments received as well as the challenges from data uncertainty in describing, estimating, and quantifying potential costs and benefits of such a rulemaking.

Background

The Coast Guard has been looking into the possibility of an expanded HIN for several years. In 1994, the Coast Guard initiated a rulemaking to create

an expanded HIN, but ultimately withdrew the rulemaking, stating: "There is no consensus on format for an expanded HIN and the Coast Guard lacks sufficient data to demonstrate that the benefits clearly outweigh the costs and burdens" 65 FR 40069 (June 29, 2000, Supplemental notice of proposed rulemaking; termination); *see also* 59 FR 23651 (May 6, 1994, Notice of proposed rulemaking); 59 FR 55823 (November 9, 1994, Notice of workshop and reopening of comment period); 62 FR 7971 (February 21, 1997, Supplemental notice of proposed rulemaking); 63 FR 63638 (November 16, 1998, Request for comments).

The Coast Guard again looked into the possibility of an expanded HIN with publication of the 2008 request for comments.

Discussion of Comments

The comments received covered a range of support and opposition to the Coast Guard's proposal for an expanded HIN. Several commenters addressed the Coast Guard's request for specific comments and data, although there was no consensus among commenters and the data and information provided was in an aggregate form with estimates which varied widely. For example, one commenter stated that certain recreational vessel manufacturers already use an expanded HIN format for their products (which include recreational vehicles as well as vessels), while several other commenters indicated by the substance of their comments that many recreational vessel manufacturers do not. Additionally, some commenters stated that the costs of an expanded HIN would be minimal and described why, while other commenters provided cost estimates to show that costs would be excessive. The Coast Guard found these comments helpful in showing a variety of opinions and possible data regarding the proposal to expand the HIN. These comments, however, also indicate that currently there are no definitive means to address this issue.

Although some commenters provided certain requested data, the request for comments did not garner any quantitative data or specific information regarding the benefits of an expanded HIN. Some commenters specifically agreed with the Coast Guard's discussion of possible benefits from an expanded HIN, such as enhanced assistance in the recovery of stolen vessels, reduced recreational vessel fraud, improved accuracy of accident data analysis, and increased remote identification of a "suspect" vessel. None of the commenters provided any benefit-specific data or information to support the commenters' expressed views. Challenges to an expanded HIN proposal and its potential benefits were also general statements—opposing the proposal or disagreeing with the Coast Guard's discussion of the proposal—and did not contain sufficiently specific data or information.

In addition to seeking information from the public on an expanded HIN proposal, the Coast Guard also performed its own evaluation of the potential costs and benefits of such a proposal. The Coast Guard found a lack of available data regarding potential costs and benefits.

Conclusion

At this time, the Coast Guard has decided that it is in the best interest of the public and the boating safety community to focus its attention and devote its resources to other regulatory actions. If the Coast Guard decides in the future to reconsider an expanded HIN, we will provide notice in a new **Federal Register** publication.

Dated: February 2, 2011.

K.S. Cook,

Rear Admiral, U.S. Coast Guard Director of Prevention Policy.

[FR Doc. 2011–3037 Filed 2–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2011–0004; 70101–1261–0000L6]

RIN 1018–AX52

Subsistence Management Regulations for Public Lands in Alaska—Subpart B, Federal Subsistence Board

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations concerning the composition of the Federal Subsistence Board (Board). On October 23, 2009, the Secretary of the Interior announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska. The review focused on how the program is meeting the purposes and subsistence provisions of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and how the program is serving rural subsistence users. The review proposed several administrative and regulatory changes to strengthen the program and make it more responsive to rural users. One proposed change called for adding two public members representing rural Alaskan subsistence users to the existing Board, which would afford additional regional representation and increase stakeholder input in the decisionmaking process.

DATES: *Public meetings:* The Federal Subsistence Regional Advisory Councils will hold public meetings to receive comments and make proposals to change this proposed rule on several dates between February 15, 2011, and March 24, 2011, and to make recommendations on the proposed rule to the Federal Subsistence Board. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, on May 3, 2011, and make recommendations on the proposed rule to the Secretary of the Interior and the Secretary of Agriculture. *See* **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: Comments and proposals to change this proposed rule must be received or postmarked by April 12, 2011.

ADDRESSES: *Public meetings:* The Federal Subsistence Board and the Regional Advisory Councils' public meetings will be held at various locations in Alaska. *See* **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov* and search for FWS–R7–SM–2011–0004, which is the docket number for this rulemaking.
- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, *Attn:* Theo Matuskowitz, Anchorage, AK 99503–6199, or hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. *See* **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

We will post all comments on *http://www.regulations.gov.* This

generally means that we will post any personal information you provide us (*see* the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, *Attention:* Peter J. Probasco, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461 or *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program (Program). This Program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this Program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations were published in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations a number of times. Because this Program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife. Only the Secretaries can promulgate changes to the subpart A and B regulations.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board is made up of:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- The Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits. As the Secretaries are responsible for promulgating changes to subparts A and B; the Board is assisting the Secretaries in this effort.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Regional Council members represent varied geographical, cultural, and user interests within each region.

Proposed Regulatory Changes

On October 23, 2009, Secretary of the Interior Salazar announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska. The review focused on how the Program is meeting the purposes and subsistence provisions of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and how the Program is serving rural subsistence users as envisioned when the program was begun in the early 1990s.

On August 31, 2010, the Secretaries announced the findings of the review. The Program review proposed several administrative and regulatory changes to strengthen the Program and make it more responsive to the concerns of those who rely on it for their subsistence needs. One proposal called for adding two public members representing rural Alaskan subsistence users to the Federal Subsistence Board, which would allow additional regional representation and increased stakeholder input in the decisionmaking process. Conforming regulatory changes are also proposed to clarify the designation of alternates for Federal Board members and to increase the size of a quorum.

Public Review Process—Comments, Proposals, and Public Meetings

The Regional Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board, through the Regional Councils, will hold meetings on this proposed rule at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council	Sitka	March 22, 2011.
Region 2—Southcentral Regional Council	Anchorage	March 16, 2011.
Region 3—Kodiak/Aleutians Regional Council	Kodiak	February 16, 2011.
Region 4—Bristol Bay Regional Council	Naknek	March 9, 2011.
Region 5—Yukon-Kuskokwim Delta Regional Council	Mtn. Village	February 23, 2011.
Region 6—Western Interior Regional Council	Galena	March 1, 2011.
Region 7—Seward Peninsula Regional Council	Nome	February 15, 2011.
Region 8—Northwest Arctic Regional Council	Kotzebue	March 18, 2011.
Region 9—Eastern Interior Regional Council	Fairbanks	March 3, 2011.
Region 10—North Slope Regional Council	Barrow	March 7, 2011.

A notice will be published of specific dates, times, and meeting locations in local and statewide newspapers prior to this series of meetings. Locations and dates may change based on weather or local circumstances. The amount of work on each Regional Council's agenda determines the length of each Regional Council meeting.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, AK, on May 3, 2011. The Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional oral testimony may be provided to the Board at that time. At that public meeting, the Board will deliberate and make final recommendations to the Secretaries on this proposed rule.

Tribal Consultation and Comment

As expressed in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 75 FR 60810 (October 1, 2010) and the relationship required by statute for consultation and coordination with Alaska Native corporations. Consultation with Alaska Native corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian Tribes under Executive Order No. 13175."

The Alaska National Interest Lands Conservation Act does not provide rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because Tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this rule.

The Board will engage in outreach efforts for this rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, e-mail, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations for consultation with regard to subsistence rulemaking.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and address their concerns as much as practicable. The Board will inform the Tribes and Alaska Native corporations how their recommendations were considered.

Compliance With Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

Several alternatives were considered for the composition of the Board including all Federal agency heads and all public members representing subsistence users. This proposed regulation adding two additional public members to the Board falls within the scope of alternatives. For this reason, the impacts described in the FEIS and ROD are deemed sufficient for this proposed regulation and require no further analysis.

Even in the absence of the consideration of alternatives in the existing programmatic FEIS and ROD, no further NEPA analysis would be required in this instance. There are two reasons for this. The first is that this action is merely administrative in nature and has no environmental impact. The second is that activities of this nature are categorically excluded from the requirements of NEPA under both Department of the Interior (DOI) regulations and Department of Agriculture (DOA) regulations. Specifically, DOI regulations at 43 CFR 46.210 set forth categorical exclusions for both internal organizational changes and the adoption of regulations that are of an administrative nature. Similarly, DOA regulations at 7 CFR 1b.3(a) provide a categorical exclusion for routine activities such as personnel and organizational changes, and similar administrative functions.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly. This analysis describes impacts of the alternative Board compositions. This proposed action falls within that analysis and no further analysis is warranted.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with § 810. That evaluation concluded that, because this is merely an administrative action, the rule will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA § 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the following collections of information associated with the subsistence regulations at 36 CFR 242 and 50 CFR 100: Subsistence hunting and fishing applications, permits, and reports, Federal Subsistence Regional Advisory Council Membership Application/Nomination and Interview Forms (OMB Control No. 1018–0075 expires January 31, 2013).

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on

the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or Tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in §§ 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act does not provide rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Board will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this rule. Consultation with Alaska Native corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian Tribes under Executive Order No. 13175."

The Secretaries, through the Board, will provide a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, e-mail, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Pat Pourchot, Special Assistant to the Secretary of the Interior for Alaska Affairs, Department of the Interior, Anchorage, Alaska. Additional assistance was provided by:

- Peter J. Probasco, Office of Subsistence Management, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Secretaries propose to amend 36 CFR 242 and 50 CFR 100, as set forth below.

PART ___—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 would continue to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Amend § __.10 by revising paragraphs (b)(1) and (d)(2) to read as follows:

§ __.10 Federal Subsistence Board.

* * * * *

(b) * * *

(1) The voting members of the Board are: A Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; two public members representing rural Alaskan subsistence users to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Regional Director, Bureau of Indian Affairs. Each Federal agency member of the Board may appoint a designee.

* * * * *

(d) * * *

(2) A quorum consists of five members.

* * * * *

Dated: February 2, 2011.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Dated: January 18, 2011.

Beth G. Pendleton,

Regional Forester, USDA—Forest Service.

[FR Doc. 2011–2959 Filed 2–10–11; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2008–0692, EPA–HQ–OW–2009–0297; FRL–9262–8]

RIN 2040–AF08

Drinking Water: Regulatory Determination on Perchlorate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Regulatory determination.

SUMMARY: This action presents EPA's (or the Agency's) regulatory determination for perchlorate in accordance with the Safe Drinking Water Act (SDWA). Specifically, EPA has determined that perchlorate meets SDWA's criteria for regulating a contaminant—that is, perchlorate may have an adverse effect on the health of persons; perchlorate is known to occur or there is a substantial likelihood that perchlorate will occur in public water systems with a frequency and at levels of public health concern; and in the sole judgment of the Administrator, regulation of perchlorate in drinking water systems presents a meaningful opportunity for health risk reduction for persons served by public water systems. Therefore, EPA will initiate the process of proposing a national primary drinking water regulation (NPDWR) for perchlorate.

DATES: For purposes of judicial review, the regulatory determination is issued as of February 11, 2011, as provided in 40 CFR 23.7.

ADDRESSES: EPA has established dockets for this action under Docket ID numbers EPA–HQ–OW–2008–0692 and EPA–HQ–OW–2009–0297. All documents in these dockets 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet, but will be publicly available in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Eric Burneson, Office of Ground Water and Drinking Water, Standards and Risk Management Division, at (202) 564–5250 or e-mail *burneson.eric@epa.gov.* For general information contact the EPA Safe Drinking Water Hotline at (800) 426–4791 or *e-mail: hotline-sdwa@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Abbreviations and Acronyms

CBI—confidential business information
CCL—Contaminant Candidate List
EPA—U.S. Environmental Protection Agency
FR—**Federal Register**
HRL—health reference level
kg—kilogram
L—liter
MCL—maximum contaminant level
MRL—Minimum Reporting Limit
NOEL—no observed effect level
NPDWR—National Primary Drinking Water Regulation
NRC—National Research Council
PBPK—Physiologically-Based Pharmacokinetic
PWS—public water system
RfD—reference dose
SDWA—Safe Drinking Water Act
UCMR—Unregulated Contaminant Monitoring Rule
µg—microgram (one-millionth of a gram)
U.S.—United States

I. General Information

Does this action impose any requirements on my public water system?

Today's action notifies interested parties of EPA's determination to regulate perchlorate, but imposes no requirements on public water systems (PWSs). However, this action also initiates the process to develop a national primary drinking water regulation (NPDWR) for perchlorate. At such time as the Agency establishes an NPDWR, certain PWSs will be required to take action to comply with the regulation in accordance with the schedule specified in the regulation.

II. Background

A. What is the purpose of this action?

The purpose of today's action is to present EPA's final determination to regulate perchlorate in drinking water, the rationale EPA used to make this regulatory determination, and EPA's response to certain key issues raised by commenters on previous **Federal Register** (FR) notices on the drinking water regulatory determination for perchlorate. (All comments are addressed in a Response to Comments document that is available in EPA's docket ID No. EPA–HQ–OW–2009–0297 for this regulatory determination.)

B. Background on Perchlorate Regulatory Determinations

The statutory and regulatory background for this action is described in detail in the October 10, 2008, FR notice discussing EPA's preliminary regulatory determination for perchlorate (73 FR 60262; USEPA 2008a). Briefly, SDWA section 1412(b)(1)(A), as amended in 1996, requires EPA to make a determination whether to regulate at least five contaminants from its Contaminant Candidate List (CCL) every five years. To regulate a contaminant in drinking water, EPA must determine that it meets three criteria: (1) The contaminant may have an adverse effect on the health of persons; (2) the contaminant is known to occur or there is a substantial likelihood that the

contaminant will occur in public water systems with a frequency and at levels of public health concern; and (3) in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems. Once EPA makes a determination to regulate a contaminant in drinking water, SDWA requires that EPA issue a proposed NPDWR within 24 months and a final NPDWR within 18 months of proposal.

EPA included perchlorate on the first, second, and third CCLs that were published in the **Federal Register** on March 2, 1998 (63 FR 10273; USEPA 1998), February 24, 2005 (70 FR 9071; USEPA 2005a), and October 8, 2009 (74 FR 51850; USEPA 2009a), respectively. On May 1, 2007, EPA published an update on the Agency's evaluation of perchlorate as part of the preliminary regulatory determination for 11 other CCL 2 contaminants (72 FR 24016; USEPA 2007). The Agency did not make a preliminary determination for perchlorate as part of this regulatory determination, but requested public comment on the options that the Agency was evaluating for perchlorate and requested information that could assist the Agency in its regulatory determination. EPA received eight comment letters in response to the May 2007 document (72 FR 24016; USEPA 2007) that addressed perchlorate. Public comments on the May 2007 document can be found online at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OW–2007–0068).

On October 10, 2008, EPA published a preliminary regulatory determination for perchlorate (73 FR 60262; USEPA 2008a), requesting public comment on its determination that perchlorate did not occur with a frequency and at levels of public health concern and regulation of perchlorate did not present a meaningful opportunity for health risk reduction for persons served by public water systems (the second and third criteria for regulating a contaminant under SDWA). The October 2008 notice describes in detail EPA's basis for its preliminary determination not to develop an NPDWR for perchlorate (73 FR 60262; USEPA 2008a). The Agency received nearly 33,000 comment letters on the October 2008 notice. Public comments on the October 2008 notice and supporting materials are available electronically at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OW–2008–0692).

On August 19, 2009, EPA published the *Perchlorate Supplemental Request for Comments* (74 FR 41883; USEPA 2009b) requesting comment on additional approaches to analyzing data related to EPA's perchlorate regulatory determination. These additional comments were sought in an effort to ensure consideration of all potential options for evaluating whether there is a meaningful opportunity for human health risk reduction of perchlorate through a NPDWR. EPA stated that the alternative analyses presented in this notice could lead the Agency to make a determination to regulate perchlorate. EPA received over 6,000 comments on the August 2009 notice.

EPA has evaluated the approximately 39,000 public comments received on the May 2007 document, the October 2008 notice, and August 2009 notice. EPA has prepared a response to comment document that addresses the comments related to the perchlorate regulatory determination (USEPA, 2010a). This response to public comment document, the public comments on the August 2009 notice, and supporting materials are available electronically at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OW–2009–0297).

C. What is EPA's final regulatory determination on perchlorate and what happens next?

After careful review and consideration of public comments on the May 2007, October 2008, and August 2009 notices, the Agency has made a determination to regulate perchlorate in drinking water. EPA has found that perchlorate may have an adverse effect on human health. EPA has reversed its October 2008 preliminary determination not to develop an NPDWR for perchlorate and now concludes, based on the analysis presented in this regulatory determination, that there is a substantial likelihood that perchlorate will occur in public water systems with a frequency and at levels of public health concern. Finally, EPA has determined that regulation of perchlorate presents a meaningful opportunity to reduce health risk for persons served by public water systems.

EPA is initiating the development of a proposed NPDWR for perchlorate. EPA intends to publish a proposed regulation and analyses required by SDWA for public review and comment within 24 months of this regulatory determination. EPA will consider the public comments and expects to promulgate a final regulation within 18 months of the proposal.

III. Final Regulatory Determination for Perchlorate

In making final regulatory determinations, EPA uses the criteria mandated by the 1996 SDWA Amendments. Specifically, EPA has found that perchlorate may have an adverse effect on the health of persons, that perchlorate occurs or there is a substantial likelihood that perchlorate will occur in public water systems with a frequency and at levels of public health concern, and that regulation of perchlorate in drinking water systems presents a meaningful opportunity for health risk reduction for persons served by public water systems.

A. May perchlorate have an adverse effect on the health of persons?

Yes. The perchlorate anion is biologically significant specifically with respect to the functioning of the thyroid gland. Perchlorate can interfere with the normal functioning of the thyroid gland by inhibiting the transport of iodide into the thyroid, resulting in a deficiency of iodide in the thyroid. Perchlorate inhibits (or blocks) iodide transport into the thyroid by chemically competing with iodide, which has a similar shape and electric charge. The transfer of iodide from the blood into the thyroid is an essential step in the synthesis of thyroid hormones. The thyroid hormones play an important role in the regulation of metabolic processes throughout the body and are also critical to developing fetuses and infants, especially with respect to brain development. Because the developing fetus depends on an adequate supply of maternal thyroid hormone for its central nervous system development during the first and second trimester of pregnancy, iodide uptake inhibition from low-level perchlorate exposure has been identified as a concern in connection with increasing risk of neurodevelopmental impairment in fetuses of hypothyroid mothers. Poor iodide uptake and subsequent impairment of the thyroid function in pregnant and lactating women have been linked to delayed development and decreased learning capability in their infants and children (NRC, 2005). Additionally, deficiency during childhood reduces child growth and cognitive motor function (Zimmerman, 2009). Therefore, EPA finds that perchlorate may have an adverse effect on the health of persons.

B. Is perchlorate known to occur or is there a substantial likelihood that perchlorate will occur in public water systems with a frequency and at levels of public health concern?

Yes. EPA has determined that perchlorate occurs or there is a substantial likelihood that perchlorate will occur with a frequency and at

levels of health concern in public water systems. EPA has made this determination by comparing the best available data on the occurrence of perchlorate in PWSs to potential health reference levels (HRLs) for perchlorate. HRLs are not final determinations about the level of a contaminant in drinking water that is necessary to protect any particular population. Rather they are benchmarks against which EPA compares the concentration of a contaminant found in public water systems to determine if it is at levels of public health concern.

In January 2005, the National Research Council (NRC) published "Health Implications of Perchlorate Ingestion," a review of the state of the science regarding potential adverse health effects of perchlorate exposure and mode of action for perchlorate toxicity (NRC, 2005). The NRC recommended that EPA use data from the Greer *et al.* (2002) human clinical study as the basis for deriving a reference dose for perchlorate (NRC, 2005). Although the NRC committee concluded that hypothyroidism is the first adverse effect in the continuum of effects of perchlorate exposure, NRC recommended that "the most health-protective and scientifically valid approach" was to base the perchlorate RfD on the inhibition of iodide uptake by the thyroid, which the NRC considered a non-adverse effect (NRC, 2005). The NRC recommended that EPA apply an intraspecies uncertainty factor of 10 to the no observed effect level (NOEL),[1] to account for differences in sensitivity between the healthy adults in the Greer *et al.,* (2002) study and the most sensitive population, fetuses of pregnant women who might have hypothyroidism or iodide deficiency. They viewed this as conservative and protective of health given that the NOEL is based on a non-adverse effect (iodide uptake inhibition), which precedes the adverse effect in a continuum of possible effects of perchlorate exposure. The NRC also noted that "any decrease (in thyroid hormone) is potentially more likely to have adverse effects in sensitive populations (people with thyroid disorders, pregnant women, fetuses, and infants). EPA's Integrated Risk Information System (IRIS) adopted the NRC's recommendations resulting in an RfD of 0.7 µg/kg/day (USEPA, 2005b).

In the October 2008 preliminary regulatory determination, EPA had derived a single HRL of 15 µg/L based upon the RfD, an estimate of perchlorate exposure from food for pregnant women, and traditional adult body weight (70 kg) and drinking water consumption (2 L/day) values. This single HRL was derived to reflect exposure to a pregnant woman and her fetus, which the NRC identified as "the most sensitive population."

Since the NRC also identified infants and developing children as additional life stages, EPA derived potential alternative HRLs for 14 life stages (age groups) using the RfD and life stage-specific exposure information in the August 9, 2009, notice (74 FR 41883; USEPA 2009b). These levels range from 1 µg/L to 47 µg/L and are the concentrations of perchlorate in drinking water that may result in total perchlorate exposures (from food and water) greater than the RfD for individuals at each life stage. These HRLs are calculated based on individuals who consume an average amount of perchlorate from food (except for pregnant women where EPA used a 90th percentile dietary intake estimate), but who consume equal or more water on a per body weight basis than 90 percent of their cohorts. EPA is evaluating these potential alternative HRLs and considers them to be levels of public health concern for purposes of this determination. EPA has compared these values to the data provided by PWSs subject to the first Unregulated Contaminant Monitoring Rule (UCMR 1). EPA collected and analyzed drinking water occurrence data for perchlorate from 3,865 PWSs between 2001 and 2005 under the UCMR 1. The minimum reporting level (MRL) for perchlorate under the UCMR 1 was 4 µg/L.

EPA found that 160 (approximately 4.1 percent) of the 3,865 PWSs that sampled and reported had at least 1 analytical detection of perchlorate (in at least 1 sampling point) at levels greater than or equal to the MRL of 4 µg/L. These 160 PWSs are located in 26 States and 2 territories. Of these 160 PWSs, 8 are systems serving 10,000 or fewer people and 152 are systems serving more than 10,000 people. These 160 systems reported 637 detections of perchlorate at levels greater than or equal to 4 µg/L, which is approximately 11.3 percent of the 5,629 samples collected by these 160 PWSs and approximately 1.9 percent of the 34,331 samples collected by all 3,865 PWSs. The average concentration of perchlorate for those samples with positive detections for perchlorate was 9.85 µg/L and the median concentration was 6.40 µg/L.

Table 1 presents the number and percentage of PWSs that reported perchlorate at levels exceeding various threshold concentrations. Note that the MRL for perchlorate under the UCMR 1 was 4 µg/L.

TABLE 1—PERCENT PUBLIC WATER SYSTEM ESTIMATES FOR PERCHLORATE ABOVE THRESHOLDS OF INTEREST

Threshold concentration [a]	PWSs with at least 1 detection > threshold of interest	PWS entry or sample points with at least 1 detection > threshold of interest [b]
4 µg/L	4.0% (155 of 3,865)	2.5% (371 of 14,987)
6 µg/L	2.5% (97 of 3,865)	1.5% (219 of 14,987)
9 µg/L	1.5% (56 of 3,865)	0.77% (115 of 14,987)
13 µg/L	0.93% (36 of 3,865)	0.37% (56 of 14,987)
14 µg/L	0.85% (33 of 3,865)	0.32% (48 of 14,987)
19 µg/L	0.62% (24 of 3,865)	0.20% (30 of 14,987)

[1] No observed effect level (NOEL)—an exposure level at which there are no statistically or biologically significant increases in the frequency or severity of any effect between the exposed population and its appropriate control.

TABLE 1—PERCENT PUBLIC WATER SYSTEM ESTIMATES FOR PERCHLORATE ABOVE THRESHOLDS OF INTEREST—Continued

Threshold concentration [a]	PWSs with at least 1 detection > threshold of interest	PWS entry or sample points with at least 1 detection > threshold of interest [b]
23 µg/L	0.39% (15 of 3,865)	0.13% (19 of 14,987)

[a] All occurrence measures in this table were conducted on a basis reflecting values greater than the listed thresholds. Five systems detected perchlorate levels equal to 4 µg/L and are therefore not presented in this table.

Given the range of potential alternative HRLs, EPA has reversed its October 2008 preliminary determination not to regulate perchlorate in drinking water. Based on the data in Table 1 and the range of potential alternative HRLs, EPA has determined that perchlorate is known to occur or there is a substantial likelihood that it will occur with a frequency and at levels of public health concern.

C. Is there a meaningful opportunity for the reduction of health risks from perchlorate for persons served by public water systems?

Yes. EPA has made this determination based on a consideration of the best available peer reviewed science and data collected in accordance with accepted methods related to perchlorate occurrence in drinking water, the presence of perchlorate in foods, and the potential health effects of exposure to perchlorate.

Table 2 presents EPA's estimates of the population served by PWSs that were monitored under UCMR 1 for which the highest reported perchlorate concentration was greater than the thresholds identified in Table 1. EPA has determined that a NPDWR for perchlorate could reduce perchlorate exposures for these populations to levels below the potential alternative HRLs that EPA has identified as levels of public health concerns for purposes of this determination, and that such exposure reductions present a meaningful opportunity for the reduction of health risks for persons served by PWSs.

Specifically, Table 2 presents EPA's estimates of the population served by PWSs that were monitored under UCMR 1 for which the highest reported perchlorate concentration was greater than the thresholds identified in Table 1. The second column of Table 2 presents a range of estimates of the population served by PWSs that had at least one sample with perchlorate concentrations greater than the threshold. The population range represents both a high end estimate, as well as a central value estimate. These population estimates were derived using the UCMR 1 monitoring data. The high end estimate of the population served drinking water above a threshold is derived by adding the entire system population of all PWSs in which at least one sample was found to contain perchlorate above the threshold. EPA considers this a high end estimate because it is based on the assumption that the entire system population is served water from the entry point that had the highest reported perchlorate concentration. In fact, many PWSs have multiple entry points into which treated water is pumped for distribution to their consumers. For the PWSs with multiple entry points, it is unlikely that the entire service population receives water from the one entry point with the highest single concentration. Therefore, EPA also provides a central value estimate of the population served water with perchlorate above a threshold in the second column in Table 2. EPA developed this central value estimate by assuming the population was equally distributed among all entry points and added only the proportion of the total population served by those entry points in a PWS that had at least one sample with perchlorate concentrations greater than the threshold. For example, if a PWS with 10 entry points serving 200,000 people had a sample from a single entry point with a concentration at or above a given threshold, EPA assumed that the entry point served one-tenth of the PWS population, and added 20,000 people to the total when deriving the central value population estimate. In contrast, for the high end estimate using the example above, EPA added the entire PWS population of 200,000 to the total population. The latter is likely an overestimate. The UCMR 1 population estimates in Table 2 are for people at all life stages.

TABLE 2—POPULATION ESTIMATES FOR PWSS THAT DETECTED PERCHLORATE ABOVE VARIOUS THRESHOLDS

Threshold [a]	Range of population served by PWSs with at least 1 detection > threshold [b] (million)
4 µg/L	5.1–16.6
6 µg/L	3.0–11.8
9 µg/L	1.6–5.2
14 µg/L	0.9–2.1
19 µg/L	0.7–1.6
23 µg/L	0.4–1.0

[a] All occurrence measures in this table were conducted on a basis reflecting values greater than the listed thresholds. All population estimates in this table are rounded.

[b] Population estimates are derived from UCMR 1 data.

D. Regulatory Determination

EPA has determined that perchlorate meets the criteria for regulating a contaminant in Section 1412(b)(1)(A) of SDWA. As previously discussed in this regulatory determination, perchlorate may have an adverse effect on the health of persons and perchlorate is known to occur or there is a substantial likelihood that perchlorate will occur in public water systems with a frequency and at levels of public health concern. Moreover, in light of the discussion in this regulatory determination and the information available at this time, the Administrator finds that regulation of perchlorate in drinking water systems presents a meaningful opportunity for health risk reduction for persons served by public water systems. Therefore, EPA will initiate the process of proposing a NPDWR for perchlorate.

E. Key Commenter Issues

EPA received a total of approximately 39,000 comments from individuals or organizations on the May 2007 document, and the October 2008, and August 2009 **Federal Register** notices regarding the perchlorate regulatory determination. This section briefly discusses a number of the key issues raised by commenters and EPA's response to these concerns. Responses

to all of the comments received are available in the "Comment Response Document for the Final Regulatory Determination on Perchlorate" (USEPA, 2010a) available at *http://www.regulations.gov* (Docket ID No. EPA–HQ–OW–2009–0297).

1. Health Implications of Perchlorate Exposure Above the RfD

EPA received comments indicating that the levels of perchlorate in drinking water that result in exposures greater than the RfD are not levels of public health concern because the RfD is based on a precursor to an adverse effect. EPA believes the NRC appropriately based the RfD on iodide uptake inhibition to the thyroid, for the reasons discussed in its report. EPA also received a substantial number of comments supporting the Agency's current view. EPA notes that the data underlying the definition of iodide uptake inhibition as a precursor effect and the relationship of iodide uptake inhibition to the continuum of adverse outcomes reflects an understanding of effects in adults; it may not reflect the relationship of the precursor event to adverse outcomes in neonates and infants, who may not have iodide stores sufficient to offset the effects of reduced iodide uptake. The less resilient neonatal and infant system makes the exposure gap between a precursor event (iodide uptake inhibition due to perchlorate) and reduced T3/T4 levels likely to be narrower than for adults, and in fact, the distinction between the two may be blurred for the very young (Greer *et al.,* 2002; Savin *et al.,* 2003; van den Hove *et al.,* 1999). The NRC noted that, "[T]he minimal prolonged decrease in thyroid hormone production that would be associated with adverse health effects is not known; any decrease is potentially more likely to have adverse effects in sensitive populations (people with thyroid disorders, pregnant women, fetuses, and infants) but data are not available to determine the magnitude of the decrease needed to cause adverse effects in those populations."

2. Other Thyroid Inhibiting Chemicals

EPA received a number of comments that the Agency should consider the comparative effect on iodine uptake of perchlorate exposure in drinking water to nitrate and thiocyanate exposure in drinking water in determining whether there is a meaningful opportunity for risk reduction. Other commenters, including EPA's Office of Inspector General (USEPA, 2008c), believe that a NPDWR for a group of chemicals may be appropriate based on a yet-to-be-conducted cumulative risk assessment that assesses and characterizes the combined human health risk from perchlorate, nitrate, and thiocyanate.

While EPA acknowledges that nitrate and thiocyanate have the same mode of action as perchlorate, and that the effects of combined exposure to perchlorate, nitrate, and thiocyanate are additive, EPA does not believe there are sufficient scientific data currently available to assess and characterize the combined risk of these contaminants. EPA has committed to a drinking water strategy that outlines four principles to expand public health protection for drinking water (USEPA, 2010b). One of these principles is to address contaminants as groups. However, EPA does not believe that regulatory action to address perchlorate should be further delayed. Therefore, EPA intends to develop a proposed rule for perchlorate. At such time as a NPDWR is promulgated, EPA is required to review and revise, as appropriate, its drinking water standards at least every six years. Any revision must at least maintain or improve public health protection. When there are sufficient scientific data to assess the cumulative risks of perchlorate and other contaminants, EPA will review this information to evaluate whether any revisions of NPDWRs are appropriate.

3. Perchlorate in Food

A commenter wrote that a drinking water regulation for perchlorate does not present a meaningful opportunity for health risk reduction because perchlorate contamination in food is widespread. Other commenters indicated that EPA should regulate perchlorate in drinking water to reduce the public's overall exposure to perchlorate. EPA agrees that perchlorate contamination is more widespread in foods than in PWSs; however, EPA does not believe that the widespread presence of perchlorate in food overrides the need for public health risk reduction for persons served by PWSs with perchlorate contamination. The Agency presented an extensive evaluation of dietary exposure to perchlorate in the October 2008 and August 2009 notices (73 FR 60262; USEPA 2008a and 74 FR 41883; USEPA 2009b). EPA has used this dietary exposure data to account for the relative source contribution (RSC) of perchlorate from food to estimate the range of levels of public health concern. EPA recognizes that a drinking water regulation would not eliminate total perchlorate exposure, but believes that the reduction in perchlorate exposure in drinking water presents a meaningful opportunity for health risk reduction for persons served by PWSs contaminated by perchlorate.

4. Iodide Nutritional Status

Some commenters stated that public health concerns over iodide uptake inhibition could be addressed more efficiently through promotion of iodide nutrition than through regulation of perchlorate. EPA agrees that promoting iodide nutrition is good public health policy and may have a positive influence in reducing the iodide uptake inhibition effects associated with exposure to perchlorate. However, the Agency does not think it is appropriate to rely on the promotion of iodide nutrition in this case, especially since these activities are outside of EPA's SDWA authority. As a result, while the health concerns associated with perchlorate may be addressed through other means, it is the Administrator's judgment that a standard limiting perchlorate in drinking water can reduce health risk, particularly to fetuses, infants and children.

5. Physiologically-Based Pharmacokinetic (PBPK) Modeling

EPA reviewed, modified, and applied the perchlorate PBPK models, which were originally developed by Merrill *et al.* (2005) for adults and Clewell *et al.* (2007) for other life stages, to estimate the iodide uptake inhibition in the thyroid for each life-stage (73 FR 60262; USEPA 2008a). Estimated ingestion rates were then used to estimate the internal dose and resulting iodide uptake inhibition for several life stages, including susceptible populations (*e.g.,* pregnant women and their fetuses, as well as breast-fed and bottle-fed infants).

In the August 2009 notice, EPA stated that it was re-evaluating how best to incorporate the PBPK modeling analysis into its evaluation of perchlorate—if at all. The Agency sought comments on ways to use the PBPK modeling analysis to inform the regulatory determination.

Several commenters supported the use of the PBPK model to inform the regulatory determination only if the significant limitations of the current model are addressed. For example, the inability of the model to reflect iodide nutritional status was cited by commenters and three of four peer reviewers as an important limitation (USEPA, 2008d). Also, several commenters stated that the risks to breast-fed infants and young children are not adequately addressed by the model. They challenged that the modeling analysis is based on average weight infants and healthy adults, while the sensitive life stages for perchlorate

include premature infants and hypothyroid women.

After further consideration of the peer review and public comments, EPA concludes that the PBPK modeling analysis, in the context of the perchlorate regulatory determination, is useful in examining which life stages are most susceptible to the effects of perchlorate. For example, the model indicates that a fetus may be seven times more sensitive to the effects of perchlorate than a pregnant woman. The model also allows for the estimation of the concentration of perchlorate in breast milk (thus breast-fed infant exposure) at various maternal perchlorate exposure levels. However, because of the stated limitations, EPA has decided the model does not directly bear on the current decision regarding the need for a NPDWR for perchlorate. EPA is continuing to evaluate whether the model could be used in setting a NPDWR for perchlorate.

F. Next Steps

EPA is initiating the development of a proposed NPDWR for perchlorate. However, this is not the end of a decision process but a middle step in a process that leads to a final drinking water standard. Based on this decision, EPA intends to publish a proposed NPDWR for public review and comment within 24 months of this regulatory determination.[2] EPA will continue to evaluate the science as we develop the proposed NPDWR. EPA will, as part of the proposed NPDWR, present a health risk reduction and cost analyses, an analysis of feasible treatment methods, and an analysis of small system compliance technologies. EPA will also consult with the National Drinking Water Advisory Council, the Science Advisory Board, and the Secretary of Health and Human Services, as required under SDWA.

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Dated: February 2, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–2603 Filed 2–10–11; 8:45 am]

BILLING CODE 6560–50–P

[2] On January 8, 2009, EPA issued an interim health advisory to provide guidance to State and local officials in their efforts to address perchlorate contamination. The interim health advisory (USEPA, 2008e) can be found at: *http://www.epa.gov/safewater/contaminants/unregulated/pdfs/healthadvisory_perchlorate_interim.pdf* and in EPA's docket ID No. EPA–HQ–OW–2009–0297 for this notice. EPA expects to make a final decision on the interim health advisory at such time as a definitive decision has been made with respect to the promulgation of a final perchlorate regulation.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144 and 147

[CMS–9981–P]

RIN 0950–AA20

Student Health Insurance Coverage

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

ACTION: Proposed rule.

SUMMARY: This document contains a proposed regulation that would establish rules for student health insurance coverage under the Public Health Service Act and the Affordable Care Act. The proposed rule would define "student health insurance

coverage" as a type of individual health insurance coverage, and, pursuant to section 1560(c) of the Affordable Care Act, specify certain Public Health Service Act and Affordable Care Act requirements as inapplicable to this type of individual health insurance coverage.

DATES: Send your comments on or before April 12, 2011.

ADDRESSES: In commenting, please refer to file code CMS–9981–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 to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9981–P, P.O. Box 8010, Baltimore, MD 21244–8010.

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–9981–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.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, *see* the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For questions concerning this proposed rule, contact Lisa Campbell or Robert Imes, Center for Consumer Information and Insurance Oversight, Department of Health and Human Services, by phone at (301) 492–4489.

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://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also 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.

I. Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010; the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010. In this proposed rule we refer to the two statutes collectively as the Affordable Care Act. The Affordable Care Act reorganizes, amends, and adds to the provisions of Part A of title XXVII of the Public Health Service (PHS) Act relating to group health plans and health insurance issuers in the group and individual markets.

The Department of Health and Human Services (HHS or the Department) is issuing regulations in several phases in order to implement revisions to the PHS Act made by the Affordable Care Act. Most of the previous regulations were issued jointly with the Departments of Labor and the Treasury. Interim final rules published in 2010 by the three Departments included those that implemented PHS Act sections 2711 (regarding lifetime and annual dollar limits on benefits) and 2719A (regarding patient protections) (75 FR 37188 (June 28, 2010)), and section 2713 (regarding preventive health services) (75 FR 41726 (July 19, 2010)). HHS published interim final rules implementing section 2718, regarding medical loss ratio (75 FR 74864 (December 1, 2010)). A full list of the regulations, as well as guidance published by the Departments regarding various issues related to the implementation of the Affordable Care Act, is also available at *http://www.hhs.gov/cciio* and *http://www.dol.gov/ebsa.*

Pursuant to the Affordable Care Act which requires that "[N]othing in this title (or an amendment made by this title) shall be construed to prohibit an institution of higher education (as such term is defined for purposes of the Higher Education Act of 1965) from offering a student health insurance plan, to the extent that such requirement is otherwise permitted under applicable Federal, State, or local law," this proposed regulation would define the term "student health insurance coverage" as a specific type of individual health insurance coverage, and would render certain requirements of the PHS Act and the Affordable Care Act as inapplicable to student health insurance coverage, given their unique characteristics.

II. Provisions of the Proposed Rule

A. Introduction

The U.S. Government Accountability Office (GAO) has estimated that most students enrolled in U.S. colleges and universities have health coverage through employer-sponsored plans, but approximately 7 percent of students between ages 18 and 23, around 610,000 individuals, were covered through other private insurance such as student health insurance plans in 2006.[1] Industry estimates put the number of individuals

[1] U.S. Government Accountability Office, *Most College Students Are Covered through Employer-Sponsored Coverage, and Some Colleges and States are Taking Steps to Increase Coverage,* Report 08–389 (March 2008).

with student health insurance coverage significantly higher, at 1.1 to 1.5 million individuals. This may be explained, in part, by the industry estimates counting university students of all ages, not just those between ages 18 and 23. Furthermore, older students may be more likely to have dependents enrolled under their student health insurance coverage. Altogether, according to industry sources, 1,500–2,000 institutions of higher education offer student health coverage. While the same sources estimate that 200,000 individuals have coverage through student health plan arrangements that are self-funded through colleges or universities, the vast majority of student plans are insured.

This generally means that a health insurance issuer contracts with a college or university to issue a group or an association "blanket" health insurance policy at a negotiated cost for a defined set of benefits for each student who desires coverage. While the contract between the issuer and the college or university usually covers multiple years, the contract can be modified on an annual basis to make minor benefit design modifications and to adjust the price for inflation. The policy is generally rated on a group basis based on the total expected claims experience of the college or university's students enrolled in the plan. Students of the college or university, in turn, are eligible to buy into the policy either on an academic term basis or an annual basis.

Insured student health insurance plans fall under the regulatory authority of the States and the Federal government pursuant to the PHS Act. Since these student health insurance plans are not employment-based, they do not meet the definition of a group health plan under PHS Act section 2791(a)(1),[2] even though some States regulate such plans, for purposes of State law, as types of group coverage (non-employer group coverage or association "blanket coverage").

Concerns have been raised about the quality and value of these plans in some cases. For example, the Attorney General of New York in April 2010 released the findings of an investigation that concluded in part that some student health plans have such low coverage limits, exclusions, and limited benefits that they place students and their families at risk for catastrophic costs for medical care.

[2] The definition of "group health plan" in PHS Act section 2791(a)(1) incorporates the definition of an employee welfare benefit plan under the Employee Retirement Income Security Act (ERISA) of 1974, section 3(1).

The benefits provided by student health plans vary widely. For example, the GAO study found annual limits ranging from $15,000 to $250,000, with the median being $50,000.

Given the variation in benefit designs for student health insurance coverage, premiums vary significantly. The GAO found annual premiums that ranged from $28 to $2,397, with the average being $850.

With the passage of the Affordable Care Act, several issues have arisen regarding the applicability of the PHS Act and the Affordable Care Act to student health insurance plans. Section 1560(c) of the Affordable Care Act provides that "[N]othing in this title (or an amendment made by this title) shall be construed to prohibit an institution of higher education (as such term is defined for purposes of the Higher Education Act of 1965) from offering a student health insurance plan, to the extent that such requirement is otherwise permitted under applicable Federal, State, or local law." Were certain provisions of the Affordable Care Act applied to student health insurance coverage, we believe it would effectively prohibit institutions of higher education from being able to offer these plans. Because section 1560(c) of the Affordable Care Act instructs HHS not to construe any provisions of the Affordable Care Act to have this effect, this rule discusses which provisions we propose construing not to apply to student health insurance coverage pursuant to section 1560(c).

B. Definition of Student Health Insurance Coverage

The proposed regulation would define student health insurance coverage as a type of individual health insurance coverage provided pursuant to a written agreement between an institution of higher education (as defined in the Higher Education Act of 1965) and a health insurance issuer, which is provided to students who are enrolled in that institution and their dependents. In addition, the definition would require that the coverage only be made available to students enrolled at the institution of higher education and their dependents; that eligibility for coverage could not be conditioned on any health status-related factor; and that it would have to satisfy any additional requirement that may be imposed under State law.

For purposes of the PHS Act, health insurance coverage that is not provided in connection with an employer-based group health plan is individual market coverage, notwithstanding that applicable State law might classify such non-employer group coverage as association blanket or discretionary group coverage. Previously, in the preamble to the interim final regulations implementing the individual market requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Department clarified that "college plan" coverage for students was individual market coverage, as distinguished from the group health plans provided to college employees. 62 FR 16985, 16992 (April 8, 1997).

As noted earlier in the introduction, it is believed that there are a small number of self-funded student health plans. The PHS Act and the Affordable Care Act give HHS regulatory authority over health insurance issuers in the group and individual markets and over non-Federal governmental group health plans. Because self-funded student health plans are neither health insurance coverage nor group health plans, as those terms are defined in the PHS Act, HHS has no authority to regulate them. Nonetheless, these self-funded student health plans may be regulated by the States. The Department invites comments on the prevalence, structure, and State regulation of these self-funded student health plans.

Under the proposed regulation, the term "student health insurance coverage" would be defined to include only insurance provided pursuant to a written agreement between an institution of higher education and a health insurance issuer. As proposed, the agreement could be evidenced by the health insurance issuer issuing the master insurance policy to the institution of higher education. If the institution of higher education is not the policyholder (that is, the students themselves are the policyholders), we proposed to require that in order to meet the definition of student health insurance coverage, there would have to be a separate agreement between the issuer and the institution of higher education clearly indicating the institution of higher education's role with respect to factors such as selecting, terminating, and replacing the health insurance issuer; choosing or negotiating policy terms; setting student and dependent eligibility terms; publicizing, endorsing, or recommending the policy to students and dependents; and/or providing students and dependents with assistance with obtaining benefits or appealing denials under the coverage. Under the proposed rule, if there were no written agreement between the institution of higher education and the health insurance issuer, such coverage would be subject to all of the individual

market requirements in the PHS Act and the Affordable Care Act.

The definition of student health insurance coverage in this proposed regulation would be intended to ensure that student health insurance coverage is offered only to students enrolled in an institution of higher education. Student health insurance coverage also could cover students' dependents such as their spouses and children, as defined by the plan terms.

In addition, we propose that coverage that otherwise met the definition of student health insurance coverage could still meet the definition even if it also provided coverage for limited periods of time to individuals who are on breaks between academic terms, on temporary leaves of absence for medical or other reasons, or have recently graduated or otherwise ceased enrollment in an institution of higher education. The institution of higher education and the issuer would specify in the documents governing the student health insurance coverage which individuals could be viewed as being enrolled in the institution of higher education for purposes of eligibility for the student health insurance coverage.

Past research suggests that institutions of higher education vary in the extent to which part-time students are offered student health insurance coverage.[3] This proposed regulation would not set any minimum threshold for determining student status under student health insurance coverage (for example, require that students take a minimum number of course hours each term or be seeking a degree), leaving such eligibility decisions to each institution of higher education and the issuer.

The proposed regulation would provide that coverage offered to non-students seeking individual market coverage would not meet the definition of student health insurance coverage. Other individual market coverage that incidentally covers a student (such as under a parent's family policy) would not meet the definition of student health insurance coverage under this proposed regulation.

Lastly, under this proposed regulation, in order to meet the definition of student health insurance coverage, the coverage could not condition enrollment on any health status-related factor of a student or dependent. The term "health status-related factor" or "health factor" is proposed to have the same meaning as that term has in 45 CFR 144.103, incorporating 45 CFR 146.121(a), which applies with respect to group health insurance requirements. That term includes health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability, and disability. Incorporation of this non-discrimination requirement is modeled on the definition of bona fide association coverage in 45 CFR 144.103. HHS believes that this requirement will have a minimal impact on student health insurance plans because the Department understands that, in the past, student health insurance coverage offered by institutions of higher education receiving Federal funds generally has not discriminated against individual students or dependents on the basis of health status due to requirements under section 504 of the Rehabilitation Act of 1973 and related regulations issued by the U.S. Department of Education that prohibit discrimination based on disability.[4]

C. Student Health Insurance Coverage and Short-Term Limited Duration Insurance

45 CFR 144.103 defines short-term limited duration insurance as "health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is less than 12 months after the original effective date of the contract." Short-term limited duration insurance is available to individuals to fill in gaps of coverage that otherwise might occur, such as when they are between jobs and without employer coverage. Since short-term limited duration insurance is specifically excluded from the definition of individual health insurance coverage in 45 CFR 144.103, the individual market protections of the PHS Act and the Affordable Care Act do not apply to short-term limited duration insurance.

In many student health insurance plans, the term of the coverage is for a period less than 12 months—sometimes for only a day or even minutes less than 12 months—suggesting an intent to claim short-term limited duration insurance status and avoid PHS Act and Affordable Care Act requirements.[5] However, we understand that some of these policies are also renewable at the option of the student so long as the student continues enrollment at the school. In fact, in some instances, the student's college or university will automatically re-enroll the student in such coverage without any affirmative action on the student's part.

It is our understanding that, in the past, student health insurance coverage was considered in some cases by issuers and institutions of higher education to be short-term limited duration insurance if the initial term of the coverage was less than 12 months in duration, even if it renewed automatically. Accordingly, many student health insurance plans do not provide some important protections of the PHS Act and the Affordable Care Act that apply to individual health insurance coverage. The proposed regulation would clarify that if the coverage is renewable each year at the option of the student as long as the student remains in school, the renewals would constitute "extensions that may be elected by the policyholder without the issuer's consent" that would not expire within a year, and that the coverage would not, therefore, meet the definition of short-term limited duration insurance. We understand that the right to renew the insurance coverage, provided that the student remains in school, is a common practice for student health insurance coverage. Thus, this proposed regulation would clarify that student health insurance coverage that is at least 12 months in duration, including any potential extension that may be elected by the student, is individual health insurance coverage generally subject to the individual market requirements of the PHS Act and the Affordable Care Act. This proposed regulation would not amend the existing definition of short-term limited duration insurance. HHS invites comments on the prevalence of existing student health insurance plans that meet the definition of short-term limited duration insurance and whether such plans should be subject to certain requirements of the PHS Act and the Affordable Care Act.

D. Application of the PHS Act and the Affordable Care Act

In clarifying the general applicability of the PHS Act and the Affordable Care

[3] For example, U.S. Government Accountability Office, *Most College Students Are Covered through Employer-Sponsored Coverage, and Some Colleges and States are Taking Steps to Increase Coverage*; Stacey Pogue, *Covering Uninsured Students in Texas: The Role of Student Health Insurance Coverage* (2005).

[4] "No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any * * * health insurance * * * to which this subpart applies." 34 CFR 104.43(a).

[5] For example, the Department noted one student health insurance policy that was effective from 12:01 a.m., August 1, to 11:59 p.m., July 31 of the following year. Other policies had similar policy periods.

Act to student health insurance plans, this proposed regulation would also specify that a limited number of requirements of the PHS Act and the Affordable Care Act are inapplicable to student health insurance coverage. Section 1560(c) of the Affordable Care Act provides that "[N]othing in this title (or an amendment made by this title) shall be construed to prohibit an institution of higher education (as such term is defined for purposes of the Higher Education Act of 1965) from offering a student health insurance plan, to the extent that such requirement is otherwise permitted under applicable Federal, State, or local law." The Department interprets this provision of the Affordable Care Act to mean that if particular requirements in the Affordable Care Act would, as a practical matter, have the effect of prohibiting an institution of higher education from offering a student health plan otherwise permitted under Federal, State or local law, such requirements would be inapplicable pursuant to the rule of construction in section 1560(c).

The Department has identified several provisions in the PHS Act and the Affordable Care Act that we believe would have this effect and several others that might have this effect.

For example, the PHS Act guaranteed availability and guaranteed renewability requirements are incompatible with plans that, by definition, are restricted to individuals enrolled as students in institutions of higher education and their dependents. As explained below, the proposed regulation would construe these provisions as inapplicable to student health insurance coverage, for purposes of Federal law, so as to avoid conflict with section 1560(c) of the Affordable Care Act. The PHS Act and implementing regulations make clear that guaranteed issue and guaranteed renewability requirements are inapplicable to bona fide association plans that, like student health plans, are limited by definition to a defined pool of beneficiaries. This rule proposes to construe student health insurance coverage to be offered through a bona fide association for this purpose.[6]

Under this proposed regulation, student health insurance coverage would be subject to the individual market requirements of the PHS Act and the Affordable Care Act, with the exception of those specific provisions that are identified in this proposed rule. The specific provisions which would be inapplicable to student health plans are discussed below. We also discuss other Affordable Care Act requirements that may so impede the offering of student health plans that they may also be found inapplicable pursuant to section 1560(c) of the Affordable Care Act. We solicit comments as to whether this is the case with respect to these latter requirements.

1. Guaranteed Availability and Guaranteed Renewability

Section 2741(a) of the PHS Act generally requires health insurance issuers that offer coverage in the individual market in a State to offer coverage to certain eligible individuals,[7] and prohibits imposing any preexisting condition exclusion with respect to such individuals.[8]

Section 2742 of the PHS Act requires a health insurance issuer that provides individual health insurance coverage to any individual to renew or continue the coverage in force at the option of the individual. This requirement applies regardless of whether the policyholder obtained the coverage as an eligible individual.

As previously indicated, both the guaranteed availability and guaranteed renewability requirements provide an exception for coverage that is offered through a bona fide association. (*See* PHS Act sections 2741(e)(1) and 2742(b)(5) and §§ 148.120(g)(2) and 148.122 (c)(5).)[9]

Because application of the guaranteed issue and guaranteed renewability requirements would be inconsistent with the provision of student health plans, this proposed regulation would construe student health insurance coverage for purposes of Federal law as falling within the bona fide association exception as provided in PHS Act sections 2741(e)(1) or 2742(b)(5). Such plans, by definition, meet the criteria described in sections (2) through (5) of the definition of a bona fide association, contained in 45 CFR 144.103. This is because student health insurance coverage is provided in a manner similar to a bona fide association since it only offers enrollment to a closed class of similarly situated individuals (that is, students and their dependents) and is only renewable to individuals who remain enrolled in colleges and universities as students and their dependents.[10]

In construing student health insurance coverage as bona fide association plans for purposes of these two sections of the PHS Act, we do not propose to apply the first criterion in § 144.103, which is that the association must have been actively in existence for at least five years. That criterion is designed to reinforce the requirement that an association has been formed for purposes other than obtaining insurance. However, since it is highly unlikely that an institution of higher education would, or even could, be formed only for the purpose of obtaining insurance, we do not believe it is necessary to bar institutions of higher education that have not yet been in existence for five years from providing student health insurance coverage.

We would also note that the sixth criterion (meets any additional requirement imposed by State law) simply duplicates one of the criteria under the proposed definition of

[6] *See* 45 CFR 148.120(g)(2) and 148.122(c)(5), which exempts bona fide associations from the guaranteed issue and guaranteed renewability requirements, respectively.

[7] For purposes of PHS Act sections 2741 and 2744, an eligible individual is defined in PHS Act section 2741(b). These eligible individuals, also referred to as "HIPAA eligible" individuals, meet certain criteria including having recently lost group health coverage and having at least 18 months of prior creditable coverage. *See* 45 CFR §§ 148.103 through 148.128.

[8] We note that the guaranteed availability requirement of PHS Act section 2741(a)(1) does not apply in States that are implementing an acceptable alternative mechanism for HIPAA eligible individuals under section 2744 of the PHS Act. In those States, State law provides alternative ways to guarantee coverage to eligible individuals. We doubt that such mechanisms require student health insurance coverage to be sold to HIPAA eligible individuals who otherwise would not qualify. However, if they do, we encourage such States to revise their mechanisms so that it would not be required.

[9] Section 2741(e)(1) of the PHS Act provides that "the provisions of subsection (a) of this section shall not be construed to require that a health insurance issuer offering health insurance coverage only * * * through one or more bona fide associations * * * offer such health insurance coverage in the individual market." Section 2742(b)(5) of the PHS Act provides that, in the case of health insurance coverage that is made available in the individual market only through one or more bona fide associations, the membership of the individual in the association ceases but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals.

[10] The full definition of a bona fide association is as follows: *Bona fide association* means, with respect to health insurance coverage offered in a State, an association that meets the following conditions:

(1) Has been actively in existence for at least 5 years.

(2) Has been formed and maintained in good faith for purposes other than obtaining insurance.

(3) Does not condition membership in the association on any health status-related factor relating to an individual.

(4) Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members (or individuals eligible for coverage through a member)

(5) Does not make health insurance coverage offered through the association available other than in connection with a member of the association.

(6) Meets any additional requirements that may be imposed under State law.

student health insurance coverage, so it would also be construed to be satisfied for this purpose.

This would be an automatic, construed status for purposes of Federal law, intended solely to allow student health insurance coverage to be limited to students and their dependents, without imposing any availability requirements for non-students, or renewability requirements after an individual has ceased to be a student, similar to how bona fide association coverage is limited to association members. This construed status does not require health insurance issuers offering student health insurance coverage to revise or amend their current business or marketing agreements and practices.

2. Annual Limits

Section 2711 of the PHS Act prohibits group health plans and health insurance issuers offering group or individual health insurance coverage from establishing lifetime limits on the dollar value of essential health benefits [11] and restricts annual dollar limits on such benefits before 2014 for group health plans and non-grandfathered individual market plans. For plan or policy years beginning on or after January 1, 2014, annual dollar limits will be prohibited on essential health benefits. Interim final regulations published on June 28, 2010 implement the prohibition on lifetime dollar limits and set forth restrictions on annual dollar limits that apply prior to 2014 (75 FR 37188). Under the annual limits interim final regulations, annual limits on the dollar value of essential health benefits generally cannot be lower than: $750,000 for plan or policy years beginning on or after September 23, 2010 but before September 23, 2011; $1.25 million for plan or policy years beginning on or after September 23, 2011 but before September 23, 2012; and $2 million for plan or policy years beginning on or after September 23, 2012 but before January 1, 2014.

Many issuers that have provided student health insurance coverage customarily imposed low annual limits on the student health insurance coverage, and this practice apparently continued after the enactment of the Affordable Care Act and publication of the interim final rules because of the view by issuers that many of these policies were not subject to the Affordable Care Act because they were short-term limited duration insurance. As noted above, for plan years beginning after September 23, 2011, the minimum annual limit is $1.25 million, a level which, if applied immediately to student health insurance coverage, is so much higher than many current limits that it could serve to "prohibit an institution of higher education * * * from offering a student health insurance plan." In order to avoid this and be consistent with section 1560(c) of the Affordable Care Act, HHS is proposing to provide a transition period for issuers of student health insurance coverage to comply with the annual limits requirements in 45 CFR 147.126. The transition period would be for policy years beginning before September 23, 2012. For that period, however, students and their dependents should have protection from being subjected to extremely low annual dollar limits on essential health benefits. Accordingly, student health insurance coverage would be required to have an annual limit of no less than $100,000 on essential benefits for policy years beginning on or after January 1, 2012 but before September 23, 2012. HHS believes that issuers of student health insurance coverage should be able to fully comply with the annual dollar limits requirements of not lower than $2 million for policy years beginning on or after September 23, 2012 without incurring undue financial hardship or without disruption to the student health insurance market given the period of time provided under this proposed rule for them to comply with the requirements. HHS is requesting comments on the applicability of the annual dollar limits requirements to student health insurance coverage, and the proposed phase-in of the annual dollar limits requirements.

Lastly, under the proposed regulation, the prohibition on lifetime limits under section 2711 of the PHS Act would be applicable to student health insurance coverage.

3. Coverage of Preventive Services

Section 2713 of the PHS Act requires that a group health plan and a health insurance issuer offering group or individual health insurance coverage provide benefits for specified recommended preventive services and prohibits the imposition of cost-sharing requirements with respect to such services. Interim final regulations published on July 19, 2010, implemented rules for preventive health services (75 FR 41726). Concerns have been raised as to whether certain administrative fees charged to all students to help cover the cost of student health clinic operations and care delivery (separate from the purchase of student health insurance coverage by a subset of students) constitutes "cost-sharing," the imposition of which could violate the no cost-sharing requirements for certain preventive services. Such student health fees can be charged by the college or university to all students on a quarterly, semester or annual basis, regardless of whether a student utilizes a designated clinic or enrolls in student health insurance coverage. This type of student health fee is different from premiums and cost-sharing for group health plans and health insurance coverage in that it is charged to all students enrolled at the college or university, regardless of whether the student has student health insurance coverage. As a type of individual health insurance coverage, student health insurance coverage must comply with the requirements for preventive health services under section 2713 of the PHS Act, pertaining to the prohibition of cost-sharing for preventive services. However, because of the unique nature of the student health fee, the proposed rule would provide a definition of a student administrative health fee and clarify that such fees are not cost-sharing requirements under PHS Act section 2713.

HHS is requesting comments on the applicability of section 2713 to student health insurance coverage and the interaction of the college health fee and the no cost-sharing requirement for preventive services.

4. Choice of Health Care Professional

Section 2719A of the PHS Act provides that if a group health plan, or a health insurance issuer offering group or individual health insurance coverage, requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, then the plan or issuer must permit each participant, beneficiary, or enrollee to designate any participating primary care provider who is available to accept the participant, beneficiary, or enrollee. Interim final regulations published on June 28, 2010 implemented rules for choice of health care professional (75 FR 37188). Concerns have been expressed by stakeholders representing colleges and universities that the provisions relating to choice of health care

[11] Section 1302(b) of the Affordable Care Act defines essential health benefits to "include at least the following general categories and the items and services covered within the categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care."

professional could be disruptive to the college health service system since it is a unique system which, although it is generally not indemnity coverage, is not structured like a traditional HMO or a PPO.

The proposed rule does not provide that the requirements of section 2719A would be inapplicable to student health insurance plans, but HHS is requesting comments on the applicability of the requirements for choice of health care professional to student health insurance coverage and the interaction with the college health service system.

5. Affordable Care Act Provisions Effective in 2014

HHS does not address in this proposed rule the applicability of PHS Act section 2702 (guaranteed issue) and section 2703 (guaranteed renewability) to student health insurance coverage, both of which are effective in the individual health insurance market for policy years beginning on or after January 1, 2014. HHS believes, however, that the general policy rationales supporting the inapplicability of PHS Act sections 2741 and 2742 to student health insurance coverage in this proposed regulation also would apply with respect to PHS Act sections 2702 and 2703. In addition, HHS could address in future regulations whether it would be appropriate to specify that these provisions would be inapplicable to student health insurance coverage provisions through the authority under section 1560(c) of the Affordable Care Act. Since student health insurance coverage is designed to be available and renewable only to students of colleges and universities (and their dependents), it is likely that requiring student health insurance coverage to be available and renewable to individuals other than these students could prevent the design and development of student health insurance coverage.

HHS requests comments on the applicability of PHS Act sections 2702 and 2703 and other 2014 Affordable Care Act provisions to student health insurance coverage as defined in this proposed regulation. Comments are also requested on the interaction of student health insurance coverage with the health insurance Exchanges that will be created in States beginning in 2014.

6. Medical Loss Ratio (MLR)

Some issuers have raised concerns regarding the application of the medical loss ratio (MLR) provisions of section 2718 of the Affordable Care Act to student health insurance plans. This provision requires that, in general, at least 80% (in the small group and individual markets) or 85% (in the large group market) of the premiums that issuers receive for insurance policies be spent on reimbursement for clinical services to enrollees (such as hospital and physician payments) and activities that improve health care quality. The issuers assert that the administrative cost structure of student health insurance plans is higher than the more typical individual policies, in part due to the customized nature of each college or university's plan, making compliance with the 80% MLR standard potentially prohibitive. For example, issuers stated that, compared to other health insurance coverage, student health insurance coverage may hold open enrollment periods more frequently (for example, each academic term rather than annually), require unique product designs (for example, for foreign students), and require more manual claims processing than average due to the billing and accounting practices of college health clinics. There is no public data regarding the actual expense structure of student health plans or regarding their MLRs.

HHS issued an interim final rule (IFR) (75 FR 74864, December 1, 2010, as modified by the Correction of IFR (75 FR 82277, December 30, 2010)), implementing section 2718, based on the recommendations in the MLR model regulation of the National Association of Insurance Commissioners (NAIC). In that regulation, issuers of policies that have a total annual limit of $250,000 or less (so-called "mini-med" plans) and issuers of expatriate plans are required to report their mini-med and expatriate plan experience separately from their other policies for one year, and, for that one-year period, are provided an accommodation in the formula for determining the MLR for those lines of business. This was done because mini-med plans and expatriate plans were believed to have unique characteristics or expense structures and, as here, there is limited data regarding the administrative cost structures of these policies. This accommodation was made in order to allow the collection and analysis of data to determine if they have special circumstances that warrant special methodologies. The MLR IFR does not provide a special methodology for student health insurance plans.

To the extent that the application of the MLR requirements set forth in 45 CFR part 158 to student health plans would "prohibit an institution of higher education * * * from offering a student health insurance plan," as section 1560(c) of the Affordable Care Act provides, then student health insurance plans may have unique administrative expenses that warrant developing methodologies that take such expenses into account in calculating the measure of activities to be reported as part of the MLR requirements. HHS is requesting comments on PHS Act section 2718 as it relates to student health insurance coverage.

E. Notice

1. Requirement

This proposed regulation would require a health insurance issuer to disclose to the student and any dependents in the insurance policy or certificate and any other written materials (for example, enrollment materials) that the policy being issued does not meet all of the requirements under the Affordable Care Act. HHS believes that the communication of this information is necessary in order for students and any dependents to understand the value and quality of the coverage that is being offered to them, and not have expectations that all of the requirements under the Affordable Care Act will apply. The notice would be required to provide a brief description of the requirements of the Affordable Care Act that do not apply to student health insurance coverage, and it would be required to be prominently displayed in clear, conspicuous 14-point bold type.

HHS is requesting comments on the notice requirement for student health insurance coverage.

2. Model Language

This proposed regulation would provide model language that can be used by health insurance issuers to satisfy the notice requirement. This proposed regulation would provide that substantially similar language can also be used to satisfy the requirement. HHS is requesting comments on the model language.

F. Interaction With State Laws

As indicated earlier, many States do not regulate student health insurance as individual health insurance coverage but as a type of association blanket coverage or as non-employer group coverage. However, States have been aware, ever since the enactment of HIPAA in 1996, that health insurance coverage that is not sold in connection with employment is individual market coverage for purposes of the Federal statute (unless there is a specific exception such as for short-term limited duration insurance). The preemption provisions of section 2762 of the PHS Act (added by HIPAA and implemented in 45 CFR 148.210(b)) apply so that the

PHS Act requirements are not to be "construed to prevent a State from establishing, implementing, or continuing in effect standards and requirements unless such standards and requirements prevent the application or requirement" of the PHS Act. The HIPAA conference report indicates that this is intended to be the "narrowest" preemption of State laws. (*See* House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018).

In applying this preemption standard, a State is free to continue to regulate student health insurance coverage as association coverage or as a form of group health insurance provided that doing so does not prevent the application of any of the applicable requirements and protections of the individual market provisions of the PHS Act and Affordable Care Act. If any State law or requirement prevents the application of a Federal standard, then that particular State law or requirement would be preempted. HHS invites comments on the interaction of specific State laws or requirements with the Federal standards regarding student health insurance coverage.

G. Conforming Amendments

Conforming amendments were made to the definitions in 45 CFR 144.103. First, this proposed regulation would clarify that the definitions apply to part 147 unless otherwise noted. Second, a definition of student health insurance coverage is added, which cross references the definition of student health insurance coverage in 45 CFR 147.145(a).

H. Applicability Date

The applicability date of the proposed regulation would be for policy years beginning on or after January 1, 2012. This is because the Department recognizes that health insurance issuers will need time to incorporate the requirements of individual health insurance coverage under the PHS Act that would apply to student health insurance coverage. HHS believes it would be appropriate to provide time for transitioning student health insurance coverage to comply with the PHS Act and Affordable Care Act to the extent necessary in order to maintain the offering of student health insurance coverage to students. To require that issuers of student health insurance coverage comply with the applicable provisions of the PHS Act and Affordable Care Act upon the effective date of the regulation would be disruptive to the student health insurance market.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. This proposed rule contains information collection requirements (ICRs) that are subject to review by OMB. A description of these provisions is given in the following paragraphs with an estimate of the annual burden, summarized in Table 1. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

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

We are soliciting public comment on each of these issues for the following sections of this proposed rule that contain information collection requirements (ICRs).

Proposed 45 CFR 147.145(d)(1) would require issuers of student health insurance coverage to provide notice to enrollees that the policy does not meet all of the requirements of the Affordable Care Act. In addition, the proposed regulation would require that the disclosure must be prominently displayed in clear, conspicuous 14-point bold type. Additionally, the proposed regulation provides model language that issuers of student health insurance coverage can use in order to be in compliance with the notice requirement. The model language is provided in proposed 45 CFR 147.145(d)(2).

In order to provide the notices, the issuers of student health insurance coverage will need to review the model language or draft its own language, incorporate the plan or issuer's name into the model notice (or a notice that is similar to the model), and print the notice in any plan or policy documents that are regularly sent to student enrollees.

This burden estimate encompasses the entire notice process which includes assembly of the notice. It is estimated that approximately 75 student health insurance coverage issuers will have to provide such notice.[12] We estimate that it will take approximately 2 minutes per student enrollee or approximately 1,000 hours per student health insurance issuer to prepare and mail the notices to students. Including hourly wage and printing and mailing costs, we estimate the annual cost burden will be $40,840 per affected issuer for a total cost of $3,063,000. In some cases, actual burden per notice (for example, postage) may be lower because we expect that many issuers will insert the model language into the existing plan materials that they were already intending to send to enrollees each year.

TABLE 1—ANNUAL REPORTING, RECORDKEEPING AND DISCLOSURE BURDEN

Regulation section(s)	OMB Control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/ maintenance costs ($)	Total cost ($)
§ 147.145	0938–New	75	2,250,000	.0333	75,000	26.14	3,063,000	0	3,063,000
Total	.....	75	2,250,000	.....	75,000	.....	.....	.....	3,063,000

[12] This estimate is based on data from the 2009 National Association of Insurance Commissioners (NAIC) Annual Accident and Health Policy Experience Exhibit and the American Council on Education (ACE). The 2009 NAIC filings show that there are 58 health insurance issuers offering student health coverage; however this data does not include managed care plans in California, and may include some issuers offering K–12 student accidental health coverage. In addition, data from the American Council on Education suggests that there are several smaller plans offering student health plans.

If you comment on this information collection requirement, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Office, 9998–IFC. Fax: (202) 395–6974; or E-mail: *OIRA_submission@omb.eop.gov.*

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

A. Summary

As stated earlier in this preamble, this proposed regulation is designed to address several issues that have arisen regarding the applicability of the Affordable Care Act to student health insurance coverage, including how this coverage is categorized under the PHS Act. Specifically, the provisions in this proposed regulation clarify which protections of the PHS Act and the Affordable Care Act would apply to student health insurance coverage, and to what extent students and their dependents enrolled in these plans would have the benefit of these consumer protection provisions. This proposed rule would define student health insurance coverage as a type of individual health insurance coverage and specify certain PHS Act and Affordable Care Act requirements as inapplicable to this type of individual health insurance coverage. These provisions are generally effective for student health insurance policy years beginning on or after January 1, 2012.

The Department has proposed this regulation to implement the protections intended by Congress in the most economically efficient manner possible. We have examined the effects of this rule as required by Executive Order 12866 (58 FR 51735, September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security 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)). In accordance with OMB Circular A–4, the Department has quantified the benefits, costs and transfers where possible, and has also provided a qualitative discussion of some of the benefits, costs and transfers that may stem from this proposed regulation.

B. Executive Orders 13563 and 12866

Executive Order 12866 (58 FR 51735) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 (76 FR 3821, issued on January 21, 2011) is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a proposed rule: (1) Having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and a "significant" regulatory action is subject to review by the Office of Management and Budget (OMB).

As discussed below, we have concluded that this proposed rule would likely not have economic impacts of $100 million or more in any one year or otherwise meet the definition of an "economically significant rule" under Executive Order 12866. Nevertheless, the Department has opted to provide an assessment of the potential costs, benefits, and transfers associated with this proposed regulation. This assessment is based primarily on the estimated administrative costs to issuers associated with providing the required notifications to student health plan enrollees. As discussed below, we believe that this proposed rule will have a minimal effect on premiums. The Department invites comments on this issue.

1. Need for Regulatory Action

In order to address several issues that have arisen regarding the applicability of the Affordable Care Act to student health insurance coverage, including how this coverage is categorized under the PHS Act, this proposed rule proposes that student health insurance coverage will be defined as a type of individual health insurance coverage and, with the exception of certain specific provisions, be subject to the individual market requirements of the PHS Act and the Affordable Care Act. As discussed elsewhere in the preamble, in clarifying the general applicability of the PHS Act and the Affordable Care Act to student health insurance coverage, this proposed regulation would also specify that a limited number of requirements of the PHS Act and the Affordable Care Act are inapplicable to student health insurance coverage. Section 1560(c) of the Affordable Care Act provides that "[N]othing in this title (or an amendment made by this title) shall be construed to prohibit an institution of higher education (as such term is defined for purposes of the Higher Education Act of 1965) from offering a student health insurance plan, to the extent that such requirement is otherwise permitted under applicable Federal, State, or local law." The Department interprets this provision of the Affordable Care Act to mean that if particular requirements added by the Affordable Care Act would, as a practical matter, have the effect of prohibiting an institution of higher education from offering a student health plan otherwise permitted under Federal, State or local law, such requirements would be inapplicable pursuant to the rule of construction in section 1560(c). As discussed elsewhere in the preamble, based on factual information provided by stakeholders representing colleges and universities and students, the Department has determined that if insurance meeting the definition of student health insurance coverage were required to comply with all of the market reform provisions of the

Affordable Care Act, this would be the functional equivalent of "prohibiting" the educational institutions from making such coverage available to students. This proposed rule specifies that the requirements of the PHS Act relating to guaranteed availability and guaranteed renewability would be inapplicable to student health insurance coverage; would clarify that student administrative health fees are not cost-sharing requirements under section 2713 of the PHS Act; and would provide for a transition period for issuers of student health insurance coverage to comply with the restricted annual dollar limits requirements under the Affordable Care Act. The Department believes that the clarifications that are included in this proposed rule are necessary to facilitate the offering of student health insurance plans, consistent with the requirements of Section 1560(c) of the Affordable Care Act.

2. Summary of Impacts

In accordance with OMB Circular A–4, Table V.1 below depicts an accounting statement summarizing the Department's assessment of the benefits, costs, and transfers associated with this regulatory action. The Department has limited the period covered by the regulatory impact analysis (RIA) to 2012–2013. Estimates are not provided for subsequent years because there will be significant changes in the marketplace in 2014 related to the offering of new individual and small group plans through the health insurance Exchanges. Additionally, because this proposed regulation would clarify that student health insurance coverage is and has been subject to the provisions in the Affordable Care Act, including how these plans are categorized under the PHS Act, the RIA does not estimate the overall effect of imposing the Affordable Care Act provisions on these plans. Instead, the RIA focuses on the one proposed modification to the applicability of individual market requirements that would have a potential impact during the years 2011–2013. That is, providing for a transition period for issuers of student health insurance coverage to comply with the restricted annual dollar limits requirements of section 2711 of the PHS Act. This modification is designed to facilitate the offering of student health insurance plans, consistent with the requirements of section 1560(c) of the Affordable Care Act.

The Department anticipates that the provisions of this proposed rule will help institutions of higher education to maintain the offering of student health insurance coverage by clarifying the inapplicability of certain requirements of the PHS Act and Affordable Care Act that would prohibit the offering of such coverage. In accordance with Executive Order 12866, the Department believes that the benefits of this regulatory action justify the costs.

TABLE V.1—ACCOUNTING TABLE

Benefits:

Qualitative:
* Continued coverage, access to preventive services, and continuity of care for students.
* Increased transparency relating to benefits offered in student health insurance coverage.

Costs and Transfers:	Estimate	Year dollar	Discont rate percent	Period covered
Annualized Monetized ($ millions/year)	3.1	2011	7	2012–2013
	3.1	2011	3	2012–2013

Annual costs related to providing notifications to enrollees.

Qualitative:
* Reduced rate of premium growth for student health insurance coverage from 2011 through 2013 than would have occurred under immediate compliance with the restricted annual dollar limit requirements.
* Increased out-of-pocket costs for a small number of enrollees.

3. Estimated Number of Affected Entities

Comprehensive sources of data concerning the number of persons covered by student health insurance plans and the benefit structure of those plans are not readily available. Additionally, available survey data do not adequately capture this population due to small sample sizes and the difficulty of differentiating student health plans from other individual coverage. However, we were able to develop some estimates based on a Government Accountability Office (GAO) report and data provided by the American Council on Education (ACE).

a. Estimated Number of Plans Offering Student Health Insurance Coverage

There were 4,409 degree-granting institutions in 2009, including two-year and four-year institutions.[13] The GAO found that 57 percent of colleges and universities offered student insurance plans in 2007–08,[14] suggesting that approximately 2,500 colleges and universities offered such an insurance plan. According to industry sources, approximately 1,500 to 2,000 institutions offer student health plans, and the vast majority of these plans are insured (rather than self-insured) plans.[15]

In a survey of colleges with student health plans, GAO found that all but 4 percent established some maximum benefit amount during the 2007–08 academic year. Most (68 percent of plans) defined the maximum in terms of per condition per lifetime. Approximately 24 percent of the plans

[13] U.S. Department of Education, National Center for Education Statistics. (2010). Digest of Education Statistics, 2009 *Table 265. http://nces.ed.gov/programs/digest/d09/tables/dt09_265.asp.*

[14] Government Accountability Office, "Health Insurance: Most College Students Are Covered through Employer-Sponsored Plans, and Some Colleges and States Are Taking Steps to Increase Coverage," March 2008, GAO–08–389, p. 17.

[15] It is estimated that approximately 200,000 students (less than 1% of the market) are enrolled in coverage offered through self-funded health plans. As discussed earlier in the preamble, these self-funded student plans are not subject to the requirements of the PHS Act because they are neither health insurance coverage nor group health plans, as those terms are defined in the PHS Act.

defined an annual limit (including plans with a per year or per-condition-per-year limit).[16]

Additionally, as discussed earlier in the Collection of Information Requirements section, the Department estimates that there are approximately 75 health insurance issuers that offer student health insurance coverage that is provided to eligible students and their dependents through written agreements that are negotiated with the abovementioned colleges and universities that offer such coverage.

b. Estimated Number of Individuals Enrolled in Student Health Insurance Coverage

The GAO has estimated the percentage of college students aged 18 through 23 years old who are insured through nonemployer-sponsored private health insurance programs, including student health insurance programs. GAO found that 7 percent of college students aged 18 through 23 were covered by nonemployer-sponsored private health insurance programs, including student health insurance programs.[17] However, almost one-half of all college students are not in this age group.

The National Center for Education statistics (NCES) has projected that there will be 19.0 million college students in 2012, approximately one-half of whom will be in the 18–23 age range.[18] Based on the previous GAO findings, a reasonable estimate of the total number of persons with student health insurance is approximately 1.3 million (approximately 7 percent of the estimated 19.0 million total college students). A separate source of information estimates that the five largest carriers offering student health insurance account for approximately 1.2 to 1.5 million enrollees; in addition, industry sources estimate that approximately 200,000 students are covered through student health plan arrangements that are self-funded through colleges and universities, and a relatively small number by insurers beyond the five largest carriers.[19] By comparison, 2009 data from the National Association of Insurance Commissioners' (NAIC) Accident and Health (A&H) Policy Experience Exhibit suggest that health insurance issuers offered college student policies with approximately 1.1 million enrollees (based on estimated member years, including dependents).[20] There is clearly some uncertainty about the number of people enrolled in student health insurance coverage, but it appears likely that there are between 1.1 million and 1.5 million enrollees.

Table V.2 presents the estimated distribution of persons covered by student health insurance according to the annual limits of their policies, based on two different data sources. Regardless of which data source is used, the estimated number of students affected by this regulation is small. The first data source represents the distribution of annual limits in the individual market, as presented in Table 3.3 of the interim final regulation relating to section 2711 of the Affordable Care Act, regarding lifetime and annual dollar limits on benefits (75 FR 37188 (June 28, 2010)). Because that table did not use the annual limits thresholds relevant to this regulation, the estimated number of persons in each cell was prorated. Because the Affordable Care Act prohibits group health plans and health insurance issuers offering group or individual health insurance coverage from establishing lifetime limits on the dollar value of essential benefits, for purposes of this analysis we assume that the plans with such limits (for example, 71.9 percent of the 199 plans in the GAO survey) have no annual limit. Another 4.0 percent of plans have had no limit of any type. Of the plans (13.6 percent) with per-condition-per-year limits, none had limits exceeding $100,000. The distribution of the remaining 10.6 percent of plans was estimated based on three statistics reported in the GAO report.[21]

The second data source represents the findings from the 2008 GAO report. According to the GAO's analysis, only 24 percent of student health plans had an annual limit of any sort. Although the GAO found that most student health insurance coverage included other forms of maximum benefits during the 2007–2008 academic year (for example, per condition per lifetime), such limits are prohibited under current law and hence are not relevant to this analysis.

The GAO estimate suggests that approximately 300,000 students would potentially be affected by the proposal in this regulation to allow student health insurance coverage to have annual dollar limits lower than the $750,000 that would be required in the absence of this rule.

TABLE V.2—ESTIMATED NUMBER OF PERSONS WITH STUDENT HEALTH INSURANCE COVERAGE SUBJECTED TO ANNUAL LIMITS, BY DATA SOURCE

Annual limit	HHS estimated distribution for all plans offered in the individual market		GAO distribution for student health plans with annual limits, 2007–2008	
	Percent	Number (in thousands)	Percent	Number (in thousands)
Less Than $100,000	0.2	3	21.6	281
$100,000–$749,999	2.2	29	2.5	33
$750,000–$1,999,999	12.8	166	0.0	0
$2,000,000 or Higher	84.8	1,102	75.9	986

[16] Government Accountability Office, March 2008, pp. 24, 27.

[17] Government Accountability Office, March 2008, p. 10.

[18] U.S. Department of Education, National Center for Education Statistics. (2009), *Digest of Education Statistics, 2008, Table 190. http://nces.ed.gov/fastfacts/display.asp?id=98.*

[19] Based on information compiled by the American Council on Education, primarily from the American College Health Association and the health insurance industry, September 2010.

[20] This represents data for 32 health insurance issuers (*e.g.,* licensed entities with unique NAIC company codes) that reported earned premiums and enrollment for student business in the individual or group markets on the NAIC Accident & Health (A&H) Policy Experience Exhibit for 2009, and excludes experience for companies regulated by the California Department of Managed Health Care. These issuers represent a subset of the 58 total issuers who reported any kind of student business on the NAIC A&H Policy Experience Exhibit for that year. The Department estimates that 16 issuers whose average premium per enrollee was approximately $200 or less were primarily reporting data for K–12 student accidental health coverage, which is not subject to the provisions of this rule. The Department also excluded 10 issuers that did not report valid premium and/or enrollment data for student business from this analysis. In cases where data for member years were unavailable for certain issuers, the Department used data that were reported for covered lives or number of policies/certificates as a proxy.

[21] These four percentages do not sum to 100 due to rounding.

TABLE V.2—ESTIMATED NUMBER OF PERSONS WITH STUDENT HEALTH INSURANCE COVERAGE SUBJECTED TO ANNUAL LIMITS, BY DATA SOURCE—Continued

Annual limit	HHS estimated distribution for all plans offered in the individual market		GAO distribution for student health plans with annual limits, 2007–2008	
	Percent	Number (in thousands)	Percent	Number (in thousands)
Total	100.0	1,300	100.0	1,300

Note: The estimated number of persons in each cell has been prorated.
Sources: The HHS distribution was derived from HHS, 75 FR 37188, Table 3.3; the GAO distribution was derived from GAO, March 2008, GAO–08–389, pp. 24, 27.

Given that provisions of this proposed regulation would be applicable for policy years beginning on or after January 1, 2012, and assuming that most students enrolling in student health insurance coverage do so at the beginning of the fall semester, we believe that this proposed regulation is not likely to impact a significant number of students until late summer of 2012, at which point approximately 280,000 enrollees will see their annual limits increase to no less than $100,000 on essential benefits (for student health insurance coverage policy years beginning on or after January 1, 2012, but before September 23, 2012), according to the GAO-based results.

Because this proposed regulation includes a phased transition to the restricted annual dollar limits thresholds that are required under the Affordable Care Act, some students that would have otherwise experienced increases in their annual dollar limits for policy years beginning before September 23, 2012 under current law will not experience those increases. This includes an estimated 33,000 persons with coverage offering annual limits between $100,000 and $749,999. Additionally, in the late summer of 2013, an estimated 314,000 persons enrolled in coverage with annual dollar limits below $2,000,000 will experience an increase in their annual dollar limits (to no less than $2,000,000 for essential health benefits, consistent with the Affordable Care Act requirement for policy years beginning on or after September 23, 2012). Consistent with the provisions of the Affordable Care Act, no nongrandfathered student health insurance coverage will be allowed to have annual dollar limits for policy years beginning on or after January 1, 2014.

4. Anticipated Benefits, Costs and Transfers

As discussed earlier, because this proposed regulation is clarifying that student health insurance coverage policies are and have been subject to the provisions in the Affordable Care Act, the RIA does not estimate the overall effect of imposing the Affordable Care Act provisions on these plans. Therefore, the discussion of anticipated benefits, costs and transfers focuses on the impacts associated with the clarification in this proposed rule that a limited number of requirements of the PHS Act and the Affordable Care Act are inapplicable to student health insurance coverage, in order to facilitate the offering of student health insurance plans, consistent with the requirements of section 1560(c) of the Affordable Care Act.

a. Benefits

The proposed regulation defines student health insurance coverage as a type of individual health insurance coverage and specifies certain PHS Act and Affordable Care Act requirements as inapplicable to this type of individual health insurance coverage. One such provision of this regulation is to provide for a transition period for issuers of student health insurance coverage to comply with the restricted annual dollar limits requirements under the Affordable Care Act. For example, student health insurance coverage will be allowed to impose an annual dollar limit of no less than $100,000 on essential health benefits for policy years beginning on or after January 1, 2012, but prior to September 23, 2012. While we cannot quantify them at this time, we believe there would be economic benefits to this rule resulting from improved coverage and access to health services for students because in the absence of the provisions in this proposed regulation, it is likely that there may have been some reductions in student health insurance availability—for example, due to the higher restricted annual dollar limits that otherwise would have applied in these years.

One rationale for the provision of a transition period for issuers of student health insurance coverage to comply with the restricted annual dollar limits requirements is that many student plans currently have annual limits substantially lower than the $1.25 million requirement that will be in effect for plan years beginning on or after September 23, 2011. Concerns have been expressed that some institutions of higher education would not be able to offer student health insurance coverage if the annual dollar limits were immediately to increase by those amounts. While some students will have access to dependent coverage through their parents' health insurance plans up to age 26, this may not be an option for older students and students whose parents do not have coverage.[22] In the absence of the provisions of this proposed rule, it is likely that some affected students would not be able to find affordable alternative coverage and become uninsured. To the extent that the transition period for issuers of student health insurance coverage to comply with the annual dollar limits requirements results in these institutions of higher education continuing to offer coverage, there would be benefits in terms of maintaining student health. Students who would otherwise might have been uninsured will have continued coverage, access to preventive services and be able to continue care plans for acute and chronic illnesses.

Several other provisions in this proposed rule will also help colleges and universities to continue offering student health insurance coverage by maintaining current industry practices—including the clarifications relating to the inapplicability of the guaranteed availability and renewability requirements in the PHS Act before 2014 (in order to allow student health insurance coverage to be limited to eligible students and their dependents), and the clarification that student administrative health fees are not cost-sharing requirements under Section 2713 of the PHS Act. Additionally, the notice requirements in this proposed

[22] Andrews, Michelle, "Health-Care Overhaul Offers Insurance Benefits to Young Adults," *The Washington Post,* May 25, 2010, accessed at *http://www.washingtonpost.com/wp-dyn/content/article/2010/05/24/AR2010052403141.html.*

regulation will provide increased transparency relating to the benefits that are offered in student health insurance coverage. This will assist students in making the best selection among their available coverage options.

b. Costs and Transfers

In addition to maintaining coverage as described above, the transition period for issuers of student health insurance coverage to comply with the restricted annual dollar limits requirements will likely result in a somewhat reduced rate of premium growth for student health insurance coverage from 2011 through 2013 than would have occurred if the higher annual dollar limits were required for these years. As discussed earlier in the preamble, for plan years beginning after September 23, 2011, the minimum annual limit under the Affordable Care Act is $1.25 million. This level is so much higher than many of the current annual dollar limits that if applied immediately to student health insurance coverage benefit designs, it could require large premium increases that would effectively "prohibit an institution of higher education… from offering a student health insurance plan."

At the same time, a small number of student enrollees are likely to face increased out-of-pocket costs than they would have faced if there were no transition period for issuers of student health insurance coverage to comply with the restricted annual dollar limits. Thus, there is a small transfer from this group which would have had higher out-of-pocket costs to the population of students purchasing student plans through lower premiums.

There may also be some costs associated with the provisions in this proposed rule. Those adversely affected by the higher out-of-pocket costs may seek less care than they would have under higher annual dollar limits.

Finally, the Department estimates that there will be some administrative costs to issuers associated with the notice requirements. As discussed in the Collection of Information Requirements section, we estimate that approximately 75 student health plan health insurance issuers will have to provide notices to students and any dependents indicating that the coverage does not meet all of the requirements of the Affordable Care Act. We estimate that it will take approximately 2 minutes per student enrollee or approximately 1,000 hours per student health plan insurance issuer to prepare and mail the notices to student enrollees. Including hourly wage and printing and mailing costs, we estimate the annual cost burden will be $40,840 per affected issuer, for a total cost of $3,063,000. We believe that these cost estimates are conservative, as some issuers are likely to insert the model notice language into the existing plan documents that they distribute to their enrollees, thus reducing their estimated costs.

C. Regulatory Alternatives

Under the Executive Order, HHS is required to consider alternatives to issuing regulations and alternative regulatory approaches. HHS considered the two regulatory alternatives below.

1. Require Student Health Insurance Coverage To Be Offered Through a Bona Fide Association

HHS considered requiring student health insurance coverage to meet the definition of a bona fide association, as that term is defined at 45 CFR 144.103, in order to be exempt from guaranteed availability and guaranteed renewability requirements under current law provisions before 2014. This approach would have required issuers of student health insurance coverage to comply with all of the individual market requirements of the PHS Act and the Affordable Care Act except for guaranteed availability and guaranteed renewability. However, the approach would have been cost-prohibitive on some institutions of higher education, causing them to drop coverage since student health insurance coverage today rarely is offered through associations (that is, student associations). In addition, associations affiliated with newly-established institutions of higher education would have been unable to satisfy the requirement that a bona fide association be in existence for five years.

2. Change the Definition of Short-Term Limited Duration Coverage

HHS also considered modifying the definition of short-term limited-duration insurance in 45 CFR 144.103 to make it more difficult for student health insurance coverage to qualify as such (for example, shorten the time limit from 12 months to 6 months). However, this change would have had broader implications for the health insurance market and not only for coverage offered by institutions of higher education because there are currently health insurance policies being offered in the general market that meet the current definition of short-term limited duration insurance. As indicated earlier, these products serve as stop-gap coverage for individuals who need health coverage for short periods of time. To change the definition of short-term limited duration insurance would have implications for this type of coverage.

HHS believes that the option adopted for this proposed rule (defining student health insurance coverage as individual health insurance coverage and limiting the applicability of the PHS Act and the Affordable Care Act through its authority under Affordable Care Act section 1560(c)) strikes the best balance of extending certain protections of the Affordable Care Act to students and their dependents enrolled in the student health insurance plans while preserving the availability and affordability of such coverage.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies that issue a regulation to analyze options for regulatory relief of small businesses if a proposed rule has a significant impact on a substantial number of small entities. The RFA generally defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a nonprofit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000 (States and individuals are not included in the definition of "small entity"). HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a proposed rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Small businesses are those with sizes below thresholds established by the Small Business Administration (SBA).

As discussed in the Web Portal interim final rule (75 FR 24481), HHS examined the health insurance industry in depth in the Regulatory Impact Analysis we prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis we determined that there were few if any insurance firms underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) that fell below the size thresholds for "small" business established by the SBA (currently $7 million in annual receipts for health insurers, based on North American

Industry Classification System Code 524114).[23]

Additionally, as discussed in the Medical Loss Ratio interim final rule (75 FR 74918), the Department used a data set created from 2009 National Association of Insurance Commissioners (NAIC) Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, the Department used total Accident and Health (A&H) earned premiums as a proxy for annual receipts. The Department estimated that there were 28 small entities with less than $7 million in A&H earned premiums offering individual or group comprehensive major medical coverage; however, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include receipts from these companies' other lines of business.

As discussed earlier in this regulatory impact analysis, comprehensive sources of data concerning the student health insurance market are not readily available. However, for purposes of this regulatory flexibility analysis, the Department has used data for issuers who reported offering student coverage on the 2009 NAIC A&H Policy Experience exhibit as a proxy for estimating the potential number of small issuers that could be affected by the provisions in this proposed rule. Based on these data, the Department estimates that there are 4 small entities with less than $7 million in A&H earned premiums that offer student health insurance coverage that is the subject of this proposed regulation. These small entities account for 13 percent of the estimated 32 total issuers who reported offering such coverage.[24]

The Department estimates that 100 percent of these small issuers are subsidiaries of larger carriers, and 100 percent also offer other types of A&H coverage. On average, the Department estimates that student health insurance coverage in the group market accounts for approximately 29 percent of total A&H earned premiums for these small issuers. Additionally, the Department estimates that the annual cost burden for these small entities relating to the notice requirements in this proposed rule will be $40,840 per issuer (accounting for 2.3 percent of their total A&H earned premiums). As discussed earlier, the Department believes that these estimates overstate the number of small entities that will be affected by the requirements in this proposed regulation, as well as the relative impact of these requirements on these entities because the Department has based its analysis on issuers' total A&H earned premiums (rather than their total annual receipts). Therefore, the Secretary certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a proposed rule may have a significant economic impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. This notice of proposed rulemaking would not affect small rural hospitals. Therefore, the Secretary has determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 requires that agencies assess anticipated costs and benefits before issuing any proposed rule that includes a Federal mandate that could result in expenditure in any one year by State, local or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold level is approximately $136 million.

UMRA does not address the total cost of a proposed rule. Rather, it focuses on certain categories of cost, mainly those "Federal mandate" costs resulting from: (1) Imposing enforceable duties on State, local, or Tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, State, local, or Tribal governments under entitlement programs.

This proposed rule includes no mandates on State, local, or Tribal governments. Under the proposed rule, issuers will be required to provide important Affordable Care Act and PHS Act protections for students enrolled in student health insurance coverage. Further, the estimated annual costs associated with the provisions of this proposed rule are approximately $40,840 per affected entity (or approximately $3,063,000 per year across all affected entities). Thus, this proposed regulation does not impose an unfunded mandate on State, local or Tribal governments or the private sector. However, consistent with policy embodied in UMRA, this notice for proposed rulemaking has been designed to be the least burdensome alternative for State, local and Tribal governments, and the private sector while achieving the objectives of the Affordable Care Act.

F. Federalism

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. In HHS' view, while the requirements proposed in this notice for proposed rulemaking would not impose substantial direct costs on State and local governments, this notice for proposed rulemaking has federalism implications due to direct effects on the distribution of power and responsibilities among the State and Federal governments relating to the regulation of student health insurance coverage.

As discussed earlier in the preamble, some States do not regulate student health insurance as individual health insurance coverage, but rather as a type of association "blanket coverage" or as non-employer group coverage. Under this proposed regulation, student health insurance coverage will be defined as a type of individual health insurance coverage, and will therefore be subject to the individual market requirements of the PHS Act and the Affordable Care Act, with the exception of certain specific provisions that are identified in the proposed rule. States would continue to apply State law requirements regarding student health insurance coverage. However, if any State law or requirement prevents the application of a Federal standard, then that particular State law or requirement would be preempted. Additionally, State requirements that are more stringent than the Federal requirements would be consistent with the

[23] "Table of Size Standards Matched To North American Industry Classification System Codes," effective November 5, 2010, U.S. Small Business Administration, available at *http://www.sba.gov.*

[24] As discussed earlier in this regulatory impact analysis, these 32 health insurance issuers are licensed entities with unique NAIC company codes that reported earned premiums and enrollment for student business in the individual and group markets on the NAIC Accident & Health Policy Experience Exhibit in 2009, and exclude experience for companies regulated by the California Department of Managed Health Care. This represents a subset of the 58 total issuers who reported any kind of student business on the NAIC A&H Policy Experience Exhibit for that year (including some that the Department estimates are primarily offering K–12 student accident health coverage that is not subject to the provisions of this proposed regulation).

requirements under this proposed rule. Accordingly, States have significant latitude to impose requirements with respect to student health insurance coverage that are more restrictive than the Federal law.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, HHS has engaged in efforts to consult with and work cooperatively with affected States, including consulting with State insurance officials on an individual basis.

Throughout the process of developing this notice of proposed rulemaking, HHS has attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform protections to consumers in every State. By doing so, it is HHS' view that it has complied with the requirements of Executive Order 13132. Under the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, HHS certifies that the CMS Center for Consumer Information and Insurance Oversight has complied with the requirements of Executive Order 13132 for the attached notice for proposed rulemaking in a meaningful and timely manner.

G. Congressional Review Act

This proposed regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller General for review.

List of Subjects

45 CFR Part 144

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR chapter I as set forth below:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

1. The authority citation for part 144 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

2. Section 144.103 is amended by—

a. Revising the introductory text.

b. Adding the definition of "Student Health Insurance Coverage" in alphabetical order.

The revisions and additions read as follows:

§ 144.103 Definitions.

For purposes of parts 146 (group market), 147 (health reform requirements for the group and individual markets), 148 (individual markets), and 150 (enforcement) of this subchapter, the following definitions apply unless otherwise provided:

* * * * *

Student Health Insurance Coverage has the meaning given the term in § 147.145.

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

3. The authority citation for part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

4. A new § 147.145 is added to subchapter B to read as follows:

§ 147.145 Student Health Insurance Coverage.

(a) *Definition. Student Health Insurance Coverage* is a type of individual health insurance coverage (as defined in § 144.103) that is provided pursuant to a written agreement between an institution of higher education (as defined in the Higher Education Act of 1965) and a health insurance issuer, and provided to students enrolled in that institution of higher education and their dependents, that meets the following conditions:

(1) Does not make health insurance coverage available other than in connection with enrollment as a student (or as a dependent of a student) in the institution of higher education.

(2) Does not condition eligibility for the health insurance coverage on any health status-related factor (as defined in § 146.121(a)) relating to a student (or a dependent of a student).

(3) Meets any additional requirement that may be imposed under State law.

(b) *Exemptions from the Public Health Service Act.*

(1) *Guaranteed Availability and Guaranteed Renewability.* For purposes of section 2741(e)(1) and 2742(b)(5) of the Public Health Service Act, Student Health Insurance Coverage as defined in paragraph (a) of this section is construed to be available only through a bona fide association.

(2) *Annual Limits.* (i) Notwithstanding the annual dollar limits requirements of § 147.126, for policy years beginning before September 23, 2012, a health insurance issuer offering student health insurance coverage as defined in paragraph (a) of this section may not establish an annual dollar limit on essential health benefits that is lower than $100,000.

(ii) For policy years beginning on or after September 23, 2012, a health insurance issuer offering student health insurance coverage must comply with the annual dollar limits requirements in § 147.126.

(c) *Student Administrative Health Fees.* (1) *Definition.* A student administrative health fee is a fee charged by the institution of higher education on a periodic basis to students of the institution of higher education to offset the cost of providing healthcare through health clinics regardless of whether the students utilize the health clinics or enroll in student health insurance coverage.

(2) *Preventive Services.* Notwithstanding the requirements under 2713 of the PHS Act and its implementing regulations, student administrative health fees as defined in paragraph (c)(1) of this section are not considered cost-sharing requirements with respect to specified recommended preventive services.

(d) *Notice*—(1) *Requirements.* (i) A health insurance issuer that provides student health insurance coverage must provide a notice informing students that the policy does not meet the requirements described in paragraph (b) of this section.

(ii) The notice must be prominently displayed in clear, conspicuous 14-point bold type on the front of the insurance policy or certificate and any other plan materials.

(2) *Model language.* The following model language, or substantially similar language, can be used to satisfy the notice requirement of this paragraph (d)(1): "Your student health insurance coverage, offered by [name of health insurance issuer], may not meet the minimum standards required by title XXVII of the Public Health Service Act.

Specifically, the coverage will not be renewed when you are no longer enrolled as a student at [name of institution of higher education]; and the restrictions on annual dollar limits on your benefits may not be the same as other types of coverage. For policy years beginning before September 23, 2012, if a policy for student health insurance coverage applies a dollar limit on the coverage it provides for key benefits in a year, that limit must be at least $100,000. Your student health insurance coverage put an annual limit of: [dollar amount] on [which covered benefits—notice should describe all annual limits that apply]. If you have any questions or concerns about this notice, contact [provide contact information for the health insurance issuer]."

(e) *Applicability.* The provisions of this section apply for policy years beginning on or after January 1, 2012.

Dated: February 2, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 8, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–3109 Filed 2–9–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement; Rules of the Armed Services Board of Contract Appeals

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is issuing a proposed rule to update the Rules of the Armed Services Board of Contract Appeals (ASBCA). The proposed rule implements statutory increases in the thresholds relating to the submission and processing of contract appeals and updates statutory references and other administrative information.

DATES: *Comment date:* Interested parties should submit comments in writing to the address shown below on or before March 14, 2011.

ADDRESSES: You may submit comments, identified by "DFARS ASBCA Rules", using any of the following methods:

○ *Regulations.gov:http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "DFARS ASBCA Rules" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS ASBCA Rules." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS ASBCA Rules" on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS ASBCA Rules in the subject line of the message.

○ *Fax:* 703–681–8535

○ *Mail:* Armed Services Board of Contract Appeals, Attn: Catherine Stanton, Skyline Six, Room 703, 5109 Leesburg Pike, Falls Church, VA 22041–3208.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment, please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail.

FOR FURTHER INFORMATION CONTACT: Catherine Stanton, Executive Director, ASBCA, 703–681–8503, Internet address: *catherine.stanton@asbca.mil;* or David Houpe, Chief Counsel, ASBCA, 703–681–8510, Internet address: *david.houpe@asbca.mil.*

SUPPLEMENTARY INFORMATION:

I. Background

The rule is being issued on behalf of Mr. Paul Williams, Chairman, Armed Services Board of Contract Appeals. It proposes to amend DFARS Appendix A, Armed Services Board of Contract Appeals, Part 2—Rules, to update thresholds related to requirements for contractor claims and to update information as follows:

○ The *Preface,* section II(a), is amended to update the Board's address and telephone number.

○ In *Rule 1,* subsections (b) and (c) implement section 2351(b) of Public Law 103–355, 108 Stat. 3322 (1994). Section 2351(b) amended 41 U.S.C. 605(c) to increase, from $50,000 to $100,000, the threshold relating to certification, decision, and notification requirements for contractor claims.

○ *Rule 12.1,* subsection (a), and *Rule 12.3,* subsection (b), implement section 2351(d) of Public Law 103–355, 108 Stat. 3322 (1994). Section 2351(d) amended 41 U.S.C. 608(a) to increase, from $10,000 to $50,000, the threshold for applicability of small claims procedures for disposition of appeals.

○ *Rule 12.1,* subsection (a) implements section 857 of Public Law 109–364, 120 Stat. 2349 (2006). Section 857 amended 41 U.S.C. 608(a) to insert after "$50,000 or less" the following language: "or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), $150,000 or less."

○ *Rule 12.1,* subsection (b), implements section 2351(c) of Public Law 103–355, 108 Stat. 3322 (1994). Section 2351(c) amended 41 U.S.C. 607(f) to increase, from $50,000 to $100,000, the threshold for applicability of accelerated procedures for disposition of appeals.

○ *Rule 28,* subsection (b), implements section 4322(b)(7) of Public Law 104–106, 110 Stat. 677 (1996). Section 4322(b)(7) amended 41 U.S.C. 612 to update statutory references relating to payment of claims. *Rule 28,* subsection (b), also contains changes for consistency with the judgment fund certification process specified in the Treasury Financial Manual, Financial Management Service, Department of the U.S. Treasury.

○ Minor changes were made throughout the Rules to ensure uniformity and to correct typographical errors.

II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule implements current statutory provisions relating to the submission and processing of contract appeals, primarily adjusting current dollar limits affecting the processing of contract appeals to keep pace with inflation. Therefore, the adjustment of thresholds just maintains the status quo. Accordingly, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties on the expected impact of this rule on small entities.

IV. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the

Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR, Appendix A, Part 2

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR chapter 2 is amended as follows:

1. The authority citation for 48 CFR chapter 2 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

Chapter 2—Defense Acquisition Regulations System, Department of Defense

2. Appendix A to Chapter 2 is amended by revising, Part 2—Rules to read as follows:

Appendix to Chapter 2 —Armed Services Board of Contract Appeals

* * * * *

Part 2—Rules

Revised [DATE]

RULES OF THE ARMED SERVICES BOARD OF CONTRACT APPEALS

PREFACE

I. JURISDICTION FOR CONSIDERING APPEALS

The Armed Services Board of Contract Appeals (referred to herein as the Board) has jurisdiction to decide any appeal from a decision of a contracting officer, pursuant to the Contract Disputes Act of 1978, 41 U.S.C. 601–613, or its Charter, relative to a contract made by—

(a) the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force or the National Aeronautics and Space Administration or

(b) any other department or agency, as permitted by law.

II. LOCATION AND ORGANIZATION OF THE BOARD

(a) The Board's address is Skyline Six, Room 703, 5109 Leesburg Pike, Falls Church, VA 22041–3208, telephone 703–681–8500 (receptionist), 703–681–8502 (Recorder).

(b) The Board consists of a Chairman, two or more Vice Chairmen, and other members, all of whom are attorneys at law duly licensed by a State, commonwealth, territory, or the District of Columbia. Board members are designated Administrative Judges.

(c) There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearings may be held by a designated member (Administrative Judge), or by a duly authorized examiner. Except for appeals processed under the expedited or accelerated procedure, the decision of a majority of a division constitutes the decision of the Board, unless the Chairman refers the appeal to the Board's Senior Deciding Group (consisting of the Chairman, Vice Chairmen, and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty or significant precedential importance, or which have occasioned serious dispute within the normal division decision process. For decisions of appeals processed under the expedited or accelerated procedure, *see* Rules 12.2(c) and 12.3(b).

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RULES

PRELIMINARY PROCEDURES

Rule 1. Appeals, How Taken

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $100,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not provided one within the period required, the contractor may file a notice of appeal as provided in subparagraph (a) hereof, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a properly certified claim over $100,000 to the contracting officer or has requested a decision by the contracting officer which presently involves no monetary amount pursuant to the Disputes clause, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in subparagraph (a) hereof, citing the failure of the contracting officer to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under (b) or (c) hereof, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

Rule 2. Notice of Appeal, Contents of

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may

designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

Rule 3. Docketing of Appeals

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these Rules, and to the contracting officer.

Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File

(a) *Duties of Contracting Officer*—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including–

(1) The decision from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time specified hereof, the contracting officer shall furnish the appellant a copy of each document the contracting officer transmits to the Board, except those in subparagraph (a)(2) hereof. As to the latter, a list furnished the appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the Appellant*—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which the appellant considers relevant to the appeal, and furnish two copies of such documents to the Government trial attorney.

(c) *Organization of Appeal File*—Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order, where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents*—Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document for which such a waiver has been granted, the party shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the filing party.

(e) *Status of Documents in Appeal File*—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) Notwithstanding the foregoing, the filing of the Rule 4(a) and (b) documents may be dispensed with by the Board either upon request of the appellant in its notice of appeal or thereafter upon stipulation of the parties.

Rule 5. Motions

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right, at any time and on its own initiative, to raise the issue of its jurisdiction to proceed with a particular appeal, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

Rule 6. Pleadings

(a) *Appellant*—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of its claims. The appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government unless a copy has been provided directly by the appellant. Should the complaint not be received within 30 days, the appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government*—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise, and direct statements of the Government's defenses to each claim asserted by the appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon the appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(c) A party who intends to raise an issue concerning the law of a foreign country shall give notice in its pleadings or other reasonable written notice. The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 11, 13, or 20. The determination of foreign law shall be treated as a ruling on a question of law.

Rule 7. Amendments of Pleadings or Record

The Board, upon its own initiative or upon application by a party, may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided however, that the objecting party may be granted a continuance, if necessary, to enable it to meet such evidence.

Rule 8. Hearing Election

After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

Rule 9. Prehearing Briefs

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

Rule 10. Prehearing or Presubmission Conference

(a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may, upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider—

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record,

or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pre-trial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner, and this writing shall thereafter constitute a part of the record.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

Rule 12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures (These procedures are available solely at the election of the appellant.)

12.1 Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

(a) In appeals where the amount in dispute is $50,000 or less, or in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), $150,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal where the amount in dispute is $50,000 or less.

(b) In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election, once made, may not be withdrawn except with permission of the Board and for good cause.

12.2 The SMALL CLAIMS (EXPEDITED) Procedure

(a) In appeals proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of the appellant's notice of election, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(i) identify and simplify the issues;

(ii) establish a simplified procedure appropriate to the particular appeal involved;

(iii) determine whether either party wants a hearing, and if so, fix a time and place therefor;

(iv) require the Government to furnish all the additional documents relevant to the appeal; and

(v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these Rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in appeals processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and will contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as are deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) A decision against the Government or the appellant shall have no value as precedent, and in the absence of fraud, shall be final and conclusive and may not be appealed or set aside.

12.3 The ACCELERATED Procedure

(a) In appeals proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in appeals processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of a Vice Chairman, or by a majority among these two and the Chairman in case of disagreement. Alternatively, in an appeal where the amount in dispute is $50,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as are deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

12.4 Motions for Reconsideration in Rule 12 Appeals

Motions for reconsideration of appeals decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

Rule 13. Settling the Record

(a) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated to be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 14. Discovery—Depositions

(a) *General Policy and Protective Orders*—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time, and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted*—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions*—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence*—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses*—Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas*—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

Rule 15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party—

(a) written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service;

(b) a request for the admission of specified facts and/or of the authenticity of any documents, to be answered or objected to within 45 days after service; the factual statements and/or the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and

(c) a request for the production, inspection, and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service.

The Board may allow a shorter or longer time. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

Rule 16. Service of Papers Other Than Subpoenas

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers, and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

HEARINGS

Rule 17. Where and When Held

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

Rule 18. Notice of Hearings

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

Rule 19. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

Rule 20. Hearings: Nature, Examination of Witnesses

(a) *Nature of Hearings*—Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding Administrative Judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses*—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his or her statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

Rule 21. Subpoenas

(a) *General*—Upon written request of either party filed with the Recorder, or on his or her own initiative, the Administrative Judge to whom an appeal is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring—

(1) testimony at a deposition—the deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the Board;

(2) testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) production of books and papers—in addition to (1) or (2) hereof, the production by the witness at the deposition or hearing of books and papers (including electronically stored information and other tangible things) designated in the subpoena.

(b) *Voluntary Cooperation*—Each party is expected—

(1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and

(2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoena*—

(1) A request for subpoena shall normally be filed at least—

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion, the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests To Quash or Modify*—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may—

(1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or

(2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances

require, the Board may act upon such a request at any time after a copy of the request has been served upon the opposing party.

(e) *Form: Issuance*—

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in his or her discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service*—

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena*—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

Rule 22. Copies of Papers

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

Rule 23. Posthearing Briefs

Posthearing briefs may be submitted upon such terms as may be directed by the presiding Administrative Judge or examiner at the conclusion of the hearing.

Rule 24. Transcript of Proceedings

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be established by contract between the Board and the reporter, provided that ordinary copy of transcript shall be supplied to the appellant at an amount no greater than the cost of duplication.

Rule 25. Withdrawal of Exhibits

After a decision has become final, the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

Rule 26. The Appellant

An individual appellant may appear before the Board in person; a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any State, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

Rule 27. The Government

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given the appellant or the appellant's attorney in the form specified by the Board from time to time.

DECISIONS

Rule 28. Decisions

(a) Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The Rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(b) Any monetary award to a contractor by the Board shall be promptly paid in accordance with the procedures provided by 31 U.S.C. 1304, as amended. To assure prompt payment, the Recorder will forward the required forms to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute the waiver forms which so state. The Government agency will forward the waiver and other forms with a copy of the decision to the Department of the Treasury for certification of payment.

MOTION FOR RECONSIDERATION

Rule 29. Motion for Reconsideration

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

SUSPENSIONS, DISMISSALS, DEFAULTS, REMANDS

Rule 30. Suspensions; Dismissal Without Prejudice

The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status, and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed to be with prejudice.

Rule 31. Dismissal or Default for Failure to Prosecute or Defend

Whenever a record discloses the failure of either party to file documents required by these Rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good cause is not shown, the Board may take appropriate action.

Rule 32. Remand from Court

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these Rules.

TIME, COMPUTATION, AND EXTENSIONS

Rule 33. Time, Computation, and Extensions

(a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be

included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a Federal legal public holiday, in which event the period shall run to the end of the next business day.

EX PARTE COMMUNICATIONS

Rule 34. Ex parte Communications

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

SANCTIONS

Rule 35. Sanctions

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

EFFECTIVE DATE AND APPLICABILITY

Rule 36. Effective Date

These Rules shall apply—

(a) mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and

(b) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

Paul Williams,

Chairman, Armed Services Board of Contract Appeals.

[FR Doc. 2011–3120 Filed 2–10–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0906261095–1050–02]

RIN 0648–AX97

Fisheries of the Exclusive Economic Zone off Alaska; Western Alaska Community Development Quota Program; Recordkeeping and Reporting

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to revise recordkeeping and reporting regulations and make other miscellaneous revisions to NOAA regulations concerning fisheries of the exclusive economic zone off Alaska. The proposed revisions would add a requirement that the Registered Crab Receiver record in eLandings the region in which the stationary floating processor is located at time of crab delivery; standardize reporting time limits for recording discard, disposition, product, and other required information in the daily fishing logbook, daily cumulative production logbook, eLandings, or the electronic logbook so that the information corresponds with fishing and processing operations; incorporate miscellaneous edits and corrections to regulatory text and tables, including standardizing the use of the terms "recording," "submitting," "landings," and "landing;" and reinstate regulations that were inadvertently removed in a previous final rule about locations where NMFS will conduct scale inspections. This proposed action is necessary to update and clarify regulations and is intended to promote the goals and objectives of the fishery management plans and the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

DATES: Comments must be received no later than March 14, 2011.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–AX97, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*.
- *Fax:* 907–586–7557.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

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 (*e.g.,* name, address) 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 want to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Categorical Exclusion (CE) and Regulatory Impact Review (RIR) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address; e-mailed to *OIRA_Submission@omb.eop.gov* or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. With Federal oversight, the State of Alaska manages the commercial King crab and Tanner crab fisheries under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. The fishery management plans (FMPs) were prepared by the North Pacific Fishery Management Council and approved by the Secretary of Commerce under authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). The FMPs are implemented by regulations at 50 CFR parts 679 and 680.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement, the "Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea," (Convention) which was signed in Ottawa, Canada, on March 2, 1953, and was amended by the "Protocol Amending the Convention," signed in Washington, DC on March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982.

Background

The Interagency Electronic Reporting System (IERS) with its data entry component, eLandings, was implemented with a final rule published March 2, 2005 (70 FR 10174), for the Crab Rationalization (CR) Program. The use of eLandings was implemented for groundfish fisheries and the fixed gear halibut and sablefish Individual Fishing

Quota (IFQ) Program through a final rule published December 15, 2008 (73 FR 76136). The objective of IERS and eLandings is to remove reporting duplications and simplify recordkeeping and reporting. IERS is an Internet recordkeeping system which is currently in use by State of Alaska Department of Fish and Game (ADF&G), NMFS, and International Pacific Halibut Commission (IPHC) to collect commercial harvest and production data for groundfish, Pacific halibut, and CR crab in both State waters and in the EEZ, all with one reporting system.

The data obtained from eLandings are used during boardings and site visits by NOAA Fisheries Office for Law Enforcement (OLE) and United States Coast Guard to ensure conservation of groundfish, compliance to regulations, and reporting accuracy by industry. The data are used by the Council and NMFS Alaska Fisheries Science Center for biological and economic evaluation of management measures and stock assessment. The data are used by the NMFS Observer Program for vessel position coordinates and observer coverage information. The data are used by the NMFS Inseason Branch to monitor and manage the fisheries through openings and closures of fishery species and Federal reporting area, as well as through reallocation of quotas. Timely and accurate data entry improves in-season fishery management, resulting in fewer disruptions of the fleets and processors.

The December 15, 2008, final rule is known as the "IERS final rule" and will be referred to as such in the preamble to this proposed rule. The software, eLandings, replaced the Shoreside Processor Electronic Logbook Report for electronically entering groundfish catch information and replaced the paper shoreside processor daily cumulative production logbook (DCPL). Through eLandings, NMFS also created a landing report, discard and disposition report, and production report, thus removing the need for the paper weekly production reports, daily production reports, and aggregated mothership fish tickets.

The eLandings program allows shoreside processors, stationary floating processors (SFPs), catcher/processors, and motherships to enter, edit, and summarize landings, production, discard, and disposition data on a Web-based system. After data are entered through the Web interface, catch and production records are available in near real-time for managers Once data are entered and submitted, users receive a printed production report, fish ticket, and/or an IFQ report as a receipt.

The ability to view and edit data over the Web is a benefit to processing firms that may be based, for example, in Seattle, Washington, with operating plants in multiple locations in and/or off Alaska. Data can be entered at a processing plant in Dutch Harbor, for example, and be instantaneously available for review by employees of the plant's parent company in its Seattle office.

The operators of catcher/processors (C/Ps) and motherships are required to use a combination of eLandings and a catcher/processor DCPL or mothership DCPL, as appropriate, to record fishery information. NMFS has identified minor regulatory changes to improve and update the methods and procedures of eLandings, and to improve the flexibility and efficiency of recordkeeping and reporting requirements for the fishery programs of NMFS' Alaska Region. The amendments to the eLandings procedures and corresponding regulations are described in this proposed rule.

With these amendments, NMFS intends to remove inconsistencies in the current regulations describing eLandings and to provide new language for recent developments. These changes would reduce the risk of confusion or misinterpretation of regulatory intent among industry participants and other interested parties, and would increase the efficiency of the eLandings process. The overall impact on the fishing industry would be increased operational flexibility. No economic impacts are expected from the revisions in this proposed rule. The fishing industry currently uses eLandings to comply with recordkeeping and reporting requirements, so the time and knowledge required to complete an eLandings data entry is already established. The entities upon which these changes are imposed are those registered to use eLandings.

This proposed action would create no new costs for NMFS because the costs of implementation were previously incurred under existing data collection programs. Administrative costs for NMFS would be reduced by streamlining the administrative process with no appreciable loss of necessary data or management capabilities. Automated checks in the submission system would monitor data entry for completeness.

Registered Crab Receiver (RCR) Would Record the Region in Which the Stationary Floating Processor (SFP) Is Located at Time of Crab Delivery

Monitoring compliance with the CR Program requires precise information about the port and/or region in which raw crab are received from the harvesting vessel. Current reporting requirements for SFPs do not require use of either actual port codes or geographic locations for landings. Consequently, NMFS cannot fully monitor compliance with regional delivery requirements or fully evaluate effectiveness of these provisions in protecting communities for which these requirements were developed. A minor reporting change would provide NMFS with all three of the pieces of information it requires from SFP operations: Operation type, the actual port (if any), and the region relevant to each crab fishery for which a landing is reported. The change would provide NMFS with more precise information of the port location of landings. Benefits of the change would include enhanced information about port use during crab fisheries and stronger regulatory enforcement.

The regional delivery requirements for CR Program quota share are intended to preserve the historic geographic distribution of landings in the fisheries. Communities in the Pribilof Islands and on Adak and Atka Islands are the primary beneficiaries of this regionalization provision. There are three regions; the North Region is the Bering Sea subarea north of 56°20′ N. latitude; the South Region is any area in Alaska, not in the "North Region;" and the West Region is west of 174° W. longitude and is only applicable for western Aleutian Islands golden king crab.

Although this rule would require processors to supply additional location information, regional location choices would be easily selected from pop-up menus. Under this proposed rule, for SFP operation types only (Table 14c to part 679), eLandings would "auto-fill" the port data field with the current SFP information obtained from current RCR permits and eLandings processor registrations (*see* § 679.5(e)(2)). For RCRs reporting crab landings as SFPs in port, the at-sea operation type would be entered automatically; the RCR would select the port code from a menu provided by the software. For RCRs reporting crab landings as SFPs that are not in a port, the at-sea operation type would be entered automatically and the RCR would select the regional landing code from a menu provided by the software. The revisions at § 679.5(e)(4) and § 679.5(e)(8)(iii) would provide NMFS with all three pieces of information it requires from SFP operations: Operation type, the actual port (if any), and the region relevant to

each crab fishery for which a landing is reported.

Standardize Data Entry Time Limits for Recording Discard, Disposition, Product, and Other Required Information

This proposed rule would revise regulations related to time and time limits, as follows:

♦ Time limits for recording information in the paper catcher vessel daily fishing logbooks (DFLs) and mothership and C/P DCPLs.

♦ Time limits to submit landing reports and production reports to NMFS through eLandings.

♦ Time limits to submit electronic logbook (ELB) information through eLandings.

♦ Revise information to be recorded or submitted "by noon of the following day" to read "by midnight of the following day".

♦ Revise "noon" and "midnight" in Alaska local time (A.l.t.) to read 1200 hours, A.l.t., and 2400 hours, A.l.t., respectively.

♦ Change the deadline for a vessel operator's signature entry in the DFLs, DCPLs, and ELBs from noon to midnight.

♦ Revise the deadline for printing a copy of the ELB logsheet from noon to midnight each day.

♦ Revise the submittal time limit for the delivery "landed scale weight" entry on SSP or SFP eLandings landing reports.

♦ Revise the time limit to record scale weights in the DCPL for C/Ps participating in the Central Gulf of Alaska Rockfish Program.

♦ Revise deadlines for recording scale weights and CDQ group number in the C/P trawl DCPL.

♦ Remove the requirement to record the date of landing in the SSP or SFP landing report.

♦ Clarify extension of time limits for eLandings production reports from SSPs or SFPs not taking deliveries over the weekend.

♦ Correct reporting time limit tables for DCPLs and eLandings.

Regulations governing these recording and submittal time limits may be found in the following paragraphs of 50 CFR part 679:

Reporting and submittal time limits for:	Location in part 679:
Longline and pot catcher vessel DFL	§ 679.5(c)(3)(ii)(A)
Longline and pot C/P DCPL	§ 679.5(c)(3)(ii)(B) and (c)(4)(v)(C)
Trawl catcher vessel DFL	§ 679.5(c)(4)(ii)(A)
Trawl C/P DCPL	§ 679.5(c)(4)(ii)(B)
Mothership DCPL	§ 679.5(c)(6)(ii)
SSP or SFP landing report	§ 679.5(e)(5)(ii)
C/P or mothership production report	§ 679.5(e)(10)(iv)
Electronic logbooks	§ 679.5(f)(2)(iii)(B)

NMFS received a public comment on the IERS supplemental proposed rule (75 FR 55368; September 24, 2008) regarding the time limit to submit an eLandings C/P production report. The commenter wrote that the proposed deadline of noon each day to record the previous day's discard and disposition information did not provide enough time for the vessel operator to obtain from the observer information needed to submit the report, especially for catch brought onboard the vessel immediately before midnight. He requested that NMFS change the deadline to increase the time allowed to record the previous day's discard and disposition information. NMFS agreed with this comment. In the IERS final rule, NMFS revised regulations at § 679.5(c)(3) and (c)(4) for trawl, longline, or pot C/Ps to change the data entry time limit for discard and disposition information in the eLandings production report from noon to midnight each day to record the previous day's information.

Regulations that require information to be recorded or submitted "by noon of the following day" would be revised to read "by midnight of the following day" in the DFL and DCPL. Operators of C/Ps or motherships would be required to submit their eLandings production reports by midnight each day to record the previous day's production information. For example, a C/P would submit a production report by midnight on November 2 that detailed production occurring on November 1.

After publication of the IERS final rule, industry representatives asked NMFS to change time limits for other data submitted by C/Ps and motherships. Because NMFS agrees that the deadlines for recording and submitting information should be consistent in 50 CFR part 679, NMFS proposes to revise the data entry deadlines for DFLs, DCPLs, ELBs, and eLandings. For additional time reference consistency, NMFS would revise references to "noon" and "midnight" in § 679.5 to the corresponding 24-hour clock reference in Alaska local time (A.l.t.). Noon would be changed to 1200 hours, A.l.t., and midnight would be changed to 2400 hours, A.l.t.

The deadlines for recording information in the ELBs should be consistent with the deadlines for recording the same information in the DFLs and DCPLs. Therefore, NMFS would revise the ELB regulations at § 679.5(f)(2)(iii)(B) to refer to the paragraphs in § 679.5(c) that contain the time limits for recording information in the DFLs and DCPLs.

In addition, NMFS would change the deadline for a vessel operator's signature in the DFLs, DCPLs, and ELBs from noon to midnight because the logsheets should not be signed until all required information has been recorded.

The deadline for printing a copy of the ELB logsheet also would be revised to midnight each day so that the logsheets are not printed before all the information required to be recorded for the day has been recorded.

NMFS would revise the submittal time limits for SSP or SFP eLandings landing reports. All the information in the landing report currently is required to be submitted by noon of the day following completion of the delivery. This rule would revise the submittal time limit for the "landed scale weight" of the delivery. Submission of estimated weights could be submitted by the manager if the actual landed scale weight is not available by noon of the day following completion of the delivery. NMFS would allow the SSP or SFP manager to submit a revised landing report with the actual landed scale weights by noon of the third day after completion of the delivery. NMFS would provide this additional time because it sometimes takes longer than a day to weigh all catch from a delivery.

In addition to revisions to the submittal time limits, the proposed rule would remove the requirement at § 679.5(e)(5)(i)(B)(*1*) to record the date of landing in the SSP or SFP landing report, because this information already is required in the landing report under

§ 679.5(e)(5)(i)(A)(*5*). The proposed rule also would remove the requirement at § 679.5(e)(5)(i)(A)(*11*) to submit the "total estimated hail weight" on the landing report. The "hail weight" is an estimate of the total weight of the entire catch in a delivery without regard to species. The landing report requires the submission of either estimated or landed scale weight for each species. An estimate of the total weight of all catch in the delivery is not needed on the landing report and is not currently included in the eLandings data entry screens for the landing report, so the requirement would be removed from § 679.5.

NMFS would revise the time limits for recording information about the scale weight of a haul and the Community Development Quota (CDQ) group number in the C/P trawl and mothership DCPLs in response to a comment received on the proposed rule for Amendment 91 to the Fishery Management Plan (75 FR 14016; March 23, 2010). Five of the six CDQ groups and the At-Sea Processors Association commented that current regulations require operators of trawl C/Ps to record the scale weight for the haul and the CDQ group number within 2 hours after completion of gear retrieval. However, they noted that it is unlikely that all the catch from a haul will be weighed within 2 hours of gear retrieval. Catch is often held in tanks for several hours after the gear is retrieved before weighing and processing. In addition, vessel operators and CDQ group representatives need haul weight and catch composition before deciding whether to assign the haul to the CDQ group or to the non-CDQ fisheries. They recommended that the time limit for recording scale weight and CDQ group number should be changed to within 2 hours after the completion of weighing of the catch from the haul. That period would provide adequate time for the crew to safely move the fish across the scale and reduce pressure on the observer, who must simultaneously monitor the haul and complete other sampling duties. NMFS agrees with this recommendation because the time for completion of weighing of the catch from each haul is available from two sources. The observer records the time of completion of catch weighing of each haul. In addition, the daily printout from the at-sea scales shows date and time.

BSAI Amendment 91 was published August 30, 2010 (75 FR 53026). That final rule applied to participants in the pollock (*Theragra chalcogramma*) fishery in the Bering Sea subarea of the BSAI. NMFS changed the time limit in the Amendment 91 final rule for operators of catcher/processors, catcher vessels delivering to motherships, and motherships to record the CDQ group number in the paper or electronic logbooks to within 2 hours after completion of weighing on the scale all catch in the haul.

This current rule proposes to revise and standardize reporting time limits for recording scale weights of each haul and other required information; these requirements affect more vessels than those regulated under Amendment 91. This rule proposes to revise the time limit for recording scale weight and CDQ group number to within 2 hours after the completion of weighing of the catch from the haul.

In addition, NMFS would revise the time limit to record scale weights in the DCPL within 24 hours after completion of gear retrieval for C/Ps participating in the Central Gulf of Alaska Rockfish Program. That time limit was implemented in the IERS final rule to provide sufficient time for the vessel operator to weigh all the catch in a haul before recording the weight in the DCPL. However, NMFS believes that requiring recording of scale weights within 2 hours after the completion of weighing all catch in the haul would provide sufficient recording time for all C/Ps, including those participating in the Rockfish Program.

The submittal time limits for eLandings production reports that allow SSPs or SFPs not taking deliveries over a weekend to submit production reports by noon the following Monday would be clarified to state that this allowance applies to submitting production reports from Saturday or Sunday only.

The reporting time limit tables for C/P and mothership DCPLs and eLandings in §§ 679.5(c)(3)(ii)(B), 679.5(c)(4)(ii)(B), and 679.5(c)(6)(ii) would be revised to remove the "X" in the column titled "Submit via eLandings" for information that is not required to be submitted via eLandings. This includes the "X" in the rows of the tables associated with information required to be submitted within 2 hours, "all other required information," and signatures on the logsheets.

Miscellaneous Proposed Revisions

NMFS proposes several revisions and edits to the regulations at 50 CFR part 679 that would correct miscellaneous errors, standardize text, reorganize eLandings text, remove outdated text, and correct cross references. Most of these proposed measures are technical in nature.

Standardize Certain Terms To Report Groundfish Catch in Logbooks and eLandings

Recording data in a vessel logbook is procedurally different from submitting data through eLandings. This rule would standardize certain terms used to describe data entry of groundfish catch in vessel logbooks and eLandings to make the regulations easier for the public to understand. Motherships and C/Ps are required to use a combination of DCPL and eLandings to record fisheries information. SSPs and SFPs are required to use eLandings to record fisheries information. In regulatory text, NMFS would use the word "record" or "recording" when referring to entering data in a DFL or DCPL, because data are written or entered into the logbook by hand. NMFS would use the term "submit" for entering information into eLandings, because eLandings records and transmits the data to NMFS. For the combined activity of recording in the DCPL and submitting data through eLandings, NMFS would use the term "reporting." Revisions to these terms would be made in numerous locations in §§ 679.5(c) and 679.5(e).

This rule would standardize the use of the terms "landings" and "landing" in numerous locations in § 679.5 because these two terms are inconsistently used in current regulations. This rule would revise regulatory text to use the correct form of the term. When used as a noun, the term "landings" would be used. When used as an adjective, the term "landing" would be used.

Crew and Observer Information

To resolve an inadvertent omission in the eLandings regulations, proposed paragraph 679.5(e)(8)(iii)(D) would be added. NMFS would require that the RCR record the number of crew aboard a vessel and observer information on the crab landings report. This information was not included in the IERS final rule, but these are not new data elements. This information is currently required in the DCPLs and on the eLandings data entry screen.

Revise IFQ Manual Landing Report Heading

This rule would revise the heading for § 679.5(e)(1)(iii) from "Reporting of IFQ crab, IFQ halibut, and IFQ sablefish" to "IFQ manual landing report" because it would improve the description of that section.

eLandings Processor Registration

This proposed rule would revise § 679.5(e)(2)(ii) regarding the eLandings User Agreement Form. This rule would remove detailed NMFS mail, fax, and

delivery addresses and replace them with one paragraph stating that the form must be submitted in accordance with instructions on the form.

Text Clarification Registered Buyer Landing Report

Paragraph 679.5(e)(7)(iii)(C) for a Registered Buyer landing report would be revised to simplify the text by removing "a completed IFQ landing report" and replacing it with "an IFQ landing report" and by removing "as described in this paragraph (e)(7)" and replacing it with "containing the information described in this paragraph (e)(7)."

Printing and Inspection of Landing Reports, Landing Receipts, and Production Reports

Paragraphs 679.5(e)(11) and (12) would be revised so that both paragraphs refer to the documents using the document names used elsewhere in § 679.5 and in the same order in both paragraphs. These paragraphs describe the printing, retention, and inspection of landing reports, landing receipts, and production reports. The documents, which must be printed, are the same documents that must be retained and made available for inspection. Revising the regulations to use consistent terms in the same order would enhance compliance with the requirements by making them easier to understand.

Scale Inspection Locations

This proposed rule would reinstate regulations about the location where scale inspections would occur under § 679.28(b)(2)(v). This paragraph would state that scales inspections by inspectors paid by NMFS will be conducted on vessels tied up at docks in Kodiak, Alaska; Dutch Harbor, Alaska; and in the Puget Sound area of Washington State. This paragraph was inadvertently removed from § 679.28 in the IERS final rule.

Changes to Tables

This rule would modify several regulatory tables. These modifications do not change the regulatory requirements or impose costs on entities.

Table 1a to part 679 describes delivery condition and product codes. This action would add a footnote to define "delivery condition." "Delivery condition" would be defined as the condition of the fish or shellfish at the point it is weighed and recorded on the ADF&G fish ticket.

Table 1b to part 679 describes discard and disposition codes. This rule would revise Table 1b by adding a footnote to define "disposition code." Disposition would be the intended use or disposal of the fish or shellfish.

This action would revise or add several species codes.

Tables 2a and 2d to part 679 currently describe species codes for FMP species and species codes for non-FMP species, respectively. Bering flounder, *Hippoglossoides robustus,* (species code 116) would be moved from Table 2d to Table 2a to part 679 because this species is managed under a Fishery Management Plan as part of the "other flatfish" group and therefore qualifies as an "FMP groundfish."

This action would provide separate species codes for Arrowtooth flounder, *Atheresthes stomias,* and for Kamchatka founder, *Atheresthes evermanni.* Arrowtooth flounder/Kamchatka flounder have been combined under the species code 121, because they are very similar in appearance, difficult to identify to species, and few Kamchatka flounder have been harvested until recent years. Separate species codes are necessary to allow proper reporting of the catch of these two species. As increasing amounts of Kamchatka flounder are harvested, observers and industry members are increasing efforts to identify and report the separate species. Arrowtooth flounder and Kamchatka flounder have been combined in Table 2a to part 679 under the species code 121. This action would add a new species code, 117, for Kamchatka flounder to Table 2a to part 679 and would revise the definition of species code 121 in this table to mean only Arrowtooth flounder.

Table 3 to part 679 describes product recovery rates (PRRs) for groundfish species and conversion rates for Pacific halibut. Standard (or average) PRRs are used to calculate round weight equivalents for each groundfish species and product combination from a given product. The proposed rule would make these minor revisions to Table 3 to part 679:

- Remove obsolete product codes, 2 and 42.
- Replace species codes for skates and sharks with dashes (– – –), because there are several individual species codes for these species and these PRRs apply to all of them.

Table 10 to part 679 describes Gulf of Alaska (GOA) retainable percentages. This action would make minor revisions to two footnotes. In Footnote 4, this rule would correct the spelling for the Latin term for Northern rockfish to read *S. polyspinis.* In Footnote 6, this rule would remove text that duplicates requirements described at § 679.20(j). Duplicative text within regulations can promote confusion if differences occur, and a table is not a suitable location for regulatory requirements. In Footnote 10, which lists aggregated forage species, the entry for Pacific herring (family Clupeidae) would be removed as it was incorrectly placed there. Pacific herring is not a forage fish.

Table 21 to part 679 describes the eligible GOA communities, the halibut IFQ regulatory use areas, and the community governing body that recommends the community quota entity. This rule would correct the spelling for the name of one of the communities listed in Table 21. The spelling of Port Lyons would be corrected to read Port Lions, for both the eligible community and the governing body.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the provisions of the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

Estimate of Economic Impact on Small Entities by Entity Size and Industry

NMFS does not expect this action to have a significant economic impact on a substantial number of small entities. None of the six components of this action are expected to impose more than *de minimus* costs on directly regulated entities of any size. The RIR prepared for this action provides detailed analyses of each component. Details of each of the components are presented in the preamble. In summary:

Component 1 revises regulations to standardize language between logbooks and the eLandings system. While this component should make regulations easier for the public to use, it does not add to or subtract from the regulations applying to regulated entities, and creates no costs for them.

Component 2 standardizes data entry time limits for recording information in the DFL, the DCPL, eLandings, and electronic logbooks. Standardizing data entry and submission time limits would not impose any additional costs on industry and may reduce costs by reducing the number of different daily

deadlines that apply to entry of data into the logbooks.

Component 3 standardizes the use of the terms "landings" and "landing." This action makes regulations easier to understand, does not restrict the behavior of the public, and imposes no costs on the public.

Component 4 requires the RCR to record in eLandings the region in which the SFP is located at the time of crab delivery. This information would assist NMFS in monitoring regional delivery requirements incorporated into the CR Program to protect rural areas. The costs of complying with this regulation would be *de minimus.*

Component 5 revises regulations to correct minor problems. These changes would clarify the text of the regulations, reinstate regulations that were incorrectly removed, and ensure the regulations accurately describe eLandings procedures. NMFS now requires processors to use eLandings instead of DCPLs to enter much of the required data. In one instance, eLandings regulations would be modified to add information on crew and observers that has long been required in the DCPL regulations, was included in the eLandings software, but was inadvertently omitted from the eLandings regulations. Crew information is required in the longline or pot gear DCPL at § 679.5(c)(3)(v)(F), and observer information is required at § 679.5(c)(3)(v)(I). Crew information is required in the trawl gear DCPL at § 679.5(c)(4)(v)(G), and observer information is required at 679.5(c)(4)(v)(J). Crew information is required in the mothership DCPL at § 679.5(c)(6)(v)(E), and observer information is required at 679.5(c)(6)(v)(I). Because the crew and observer information is already required in the DCPLs, requiring data entry of the same information into eLandings instead of the DCPLs would not require increased burden to provide the information. This component imposes no increased cost for entities, and may in fact reduce the burden.

Component 6 modifies regulatory tables to clarify them. These changes do not add to or subtract from the regulatory requirements imposed on entities; nor do they impose costs on entities.

Description and Estimate of the Number of Small Entities To Which the Rule Applies

This action directly regulates entities that are required to use the eLandings system for reporting landings. These entities are diverse, and include groundfish C/Ps, groundfish motherships, groundfish SFPs, groundfish SSPs, CDQ groups, CR Program RCRs, CR Program C/Ps, and halibut and sablefish IFQ Program Registered Buyers. In 2009, there were 205 registered eLandings users.

NMFS estimates that this action may directly regulate the following numbers of potential small entity eLandings users:

- *Groundfish C/Ps.* In 2008, 86 vessels were registered as groundfish C/Ps. Only 11 of these had gross revenues less than or equal to $4 million. An examination of these indicated that five had affiliations that would make them large entities. Thus, there were perhaps six small C/Ps. This number may actually be smaller if there are relevant affiliations between these and other firms of which NMFS is unaware.
- *Groundfish motherships.* In recent years, there have been three active groundfish motherships. These are considered to be large entities, due to their affiliations with American Fisheries Act cooperatives.
- *Groundfish SFPs:* In 2008, nine firms apparently operated permitted SFPs. Based on a staff review of the firms registered as primary owners, NMFS estimates that five of these may have been small entities. This number may actually be smaller, if there are relevant affiliations between these and other firms of which NMFS is unaware.
- *Groundfish SSPs:* In 2008, an estimated 80 separate firms held Federal processor permits allowing them to process groundfish. Based on NMFS' review of a list of the permitted processors, 72 of these are estimated to be small entities. The number of small entities may actually be smaller, if there are relevant affiliations between these and other firms of which NMFS is unaware.
- *CDQ groups:* There are six CDQ groups. These are non-profit organizations and are considered small entities for the purpose of a regulatory flexibility analysis.
- *CR Program RCRs:* NMFS Alaska Region Restricted Access Management (RAM) records show 20 separate firms with RCR permits for the 2008–2009 season. Based on NMFS' examination of the list, NMFS estimates that 13 of these are small entities. The number of small entities may actually be smaller if there are relevant affiliations between these and other firms of which NMFS is unaware.
- *CR Program C/Ps:* NMFS has identified five crab C/Ps in 2009. NMFS cannot report the numbers of large and small C/Ps, because of confidentiality regulations (50 CFR 600.405).
- *Halibut and sablefish IFQ Program:* Registered Buyers must report electronically, but they may use eLandings or another, older NMFS electronic reporting system to report halibut and sablefish IFQ data. In 2009, NMFS identified 462 distinct Registered Buyers. Most of these 462 Registered Buyers are small entities. In 2010, NMFS identified 157 distinct Registered Buyers registered to use eLandings.

Given the criteria governing the use of the word "substantial," these estimates of small entity numbers indicate that this action could directly regulate substantial numbers of small entities.

Criteria Used To Evaluate Whether the Rule Would Impose Significant Economic Impacts

Pursuant to NMFS' guidelines, the two criteria recommended by the Regulatory Flexibility Act to determine the significant economic impact of the action are disproportionality and profitability. The proposed action would not place a substantial number of small entities at a disadvantage relative to large entities. NMFS expects any costs to be *de minimus.* This action would create opportunities for some small entities to reduce their costs slightly and, thus, perhaps slightly increase their profitability. The benefit is probably proportionally greater for small entities than for large ones, but still small overall.

Criteria Used To Evaluate Whether the Rule Would Impose Impacts on a Substantial Number of Small Entities

NMFS' guidelines for economic review of regulatory actions explain that the term "substantial number" has no specific statutory definition and the criterion does not lend itself to objective standards applicable across all regulatory actions. Rather, "substantial number" depends upon the context of the action, the problem to be addressed, and the structure of the regulated industry. The Small Business Administration defines "substantial" within the context of "more than just a few" or *de minimus* criteria.

Description of and Basis for Assumptions Used

The estimates of the numbers of small entities that may be affected were derived from several sources. Gross revenue estimates for individual C/Ps were provided by the Alaska Fisheries Science Center. Lists of SFPs, SSPs, CDQ groups, CR Program RCRs, and IFQ Registered Buyers were obtained from lists maintained by the NMFS Alaska Region's RAM Program. The list of CR Program C/Ps was obtained from the

Alaska Region's catch accounting system. Almost all data reflect 2008 conditions as reported by NMFS sources in October 2009. Identification of large entities—when gross revenues were unavailable or when determination was based on other standards—was based on NMFS Alaska Region staff knowledge of the relevant firms.

The economic analysis contained in the RIR further describes the potential economic impacts of this action. Based upon that analysis, NMFS finds that the proposed action would not have a significant economic impact on the small entities participating in these fisheries. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

All the items included in this action would create no new costs for NMFS, because the costs of eLandings implementation have already been incurred. In fact, in addition to having more options, the industry may have fewer costs due to increased efficiency. Administrative costs for NMFS would also be reduced by streamlining the administrative process, with no appreciable loss of necessary data or management capabilities.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB). Public reporting burden estimates per response for these requirements are listed by OMB control number.

OMB Control Number 0648–0213

Public reporting burden is estimated to average per response: 18 minutes for catcher vessel trawl gear DFL; 28 minutes for catcher vessel longline or pot gear DFL; 31 minutes for mothership DCPL; 41 minutes for catcher/processor longline or pot gear DCPL; and 30 minutes for catcher/processor trawl gear DCPL or ELB.

OMB Control Number 0648–0515

Public reporting burden is estimated to average per response: 15 minutes for eLandings application processor registration; 35 minutes for eLandings landing report; and 20 minutes for catcher/processor or mothership eLandings production report.

OMB Control Number 0648–0330

Public reporting burden is estimated to average per response: 6 minutes for inspection request for an at-sea scale.

Public reporting estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Send comments on these or any other aspects of the collection-of-information to NMFS Alaska Region at the **ADDRESSES** above, and e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 4, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

2. In § 679.5,

A. Remove paragraphs (c)(3)(i)(C)(*2*) and (e)(5)(i)(A)(11);

B. Redesignate paragraph (c)(3)(i)(C)(*1*) as (c)(3)(i)(C), paragraphs (c)(4)(ii)(B)(*2*) through (*6*) as paragraphs (c)(4)(ii)(B)(*3*) through (*7*); and paragraph (e)(5)(i)(A)(*12*) as (e)(5)(i)(A)(*11*);

C. Revise paragraphs (c)(3)(ii)(A) table heading, (c)(3)(ii)(A)(*2*), (c)(3)(ii)(B) introductory text, (c)(3)(ii)(B) table heading, (c)(3)(ii)(B)(*1*), (*2*), (*3*), (*4*), and (*5*), (c)(4)(ii) heading, (c)(4)(ii)(A) table heading, (c)(4)(ii)(A)(*2*), (c)(4)(ii)(B) introductory text, (c)(4)(ii)(B) table heading, (c)(4)(ii)(B)(*1*), newly redesignated (c)(4)(ii)(B)(*3*) through (*6*), (c)(6)(ii) heading, (c)(6)(ii) introductory text, (c)(6)(ii) table heading, (c)(6)(ii)(A), (B), (C), (D), and (E), (e)(2)(ii), (e)(4), (e)(5)(i)(B), (e)(5)(ii), (e)(6)(ii), (e)(7)(iii)(C), (e)(8)(iii)(B), (e)(9)(ii), (e)(10)(iv), (e)(11)(i), (e)(12), (f)(2)(iii)(B)(*1*), and (f)(3)(i)(C); and

D. Add paragraphs (c)(4)(ii)(B)(*2*) and (e)(8)(iii)(D).

The additions and revisions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(A) * * *

REPORTING TIME LIMITS, CATCHER VESSEL LONGLINE OR POT GEAR

Required information	Time limit for recording
* * * * * *	
(*2*) Discard and disposition information	By 2400 hours, A.l.t., each day to record the previous day's discard and disposition information.
* * * * * * *	

(B) *Catcher/processor.* The operator of a catcher/processor using longline or pot gear must record in the DCPL or submit via eLandings the information from the following table for each set within the specified time limit:

REPORTING TIME LIMITS, CATCHER/PROCESSOR LONGLINE OR POT GEAR

Required information	Record in DCPL	Submit via eLandings	Time limit for reporting
(*1*) Set number, time and date gear set, time and date gear hauled, beginning and end positions, CDQ group number, halibut CDQ permit number, halibut IFQ permit number, sablefish IFQ permit number, crab IFQ permit number, FFP number and/or Federal crab vessel permit number (if applicable), number of pots set, and estimated total hail weight for each set.	X	.....	Within 2 hours after completion of gear retrieval.
(*2*) Discard and disposition information	.....	X	By 2400 hours, A.l.t., each day to record the previous day's discard and disposition information.
(*3*) Product information	.....	X	By 2400 hours, A.l.t., each day to record the previous day's production information.
(*4*) All other required information	X	.....	By 2400 hours, A.l.t., of the day following completion of production.
(*5*) Operator sign the completed logsheets	X	.....	By 2400 hours, A.l.t., of the day following the week-ending date of the weekly reporting period.
* * * * * * *			

* * * * *

(A) * * *

(4) * * *

(ii) *Reporting time limits.*

REPORTING TIME LIMITS, CATCHER VESSEL TRAWL GEAR

Required information	Time limit for recording
* * * * * * *	
(*2*) Discard and disposition information	By 2400 hours, A.l.t., each day to record the previous day's discard and disposition information.
* * * * * * *	

(B) *Catcher/processor.* The operator of a catcher/processor using trawl gear must record in the DCPL or submit via eLandings the information in the following table for each haul within the specified time limit:

REPORTING TIME LIMITS, CATCHER/PROCESSOR TRAWL GEAR

Required information	Record in DCPL	Submit via eLandings	Time limit for reporting
(*1*) Management program, except CDQ Program, haul number, time and date gear set, time and date gear hauled, begin and end positions of gear, and, if not required to weigh catch on a scale approved by NMFS, total estimated hail weight for each haul.	X	.....	Within 2 hours after completion of gear retrieval.
(*2*) CDQ group number (if applicable) and, if required to weigh catch on a scale approved by NMFS, the scale weight of total catch for each haul.	X	.....	Within 2 hours after completion of weighing all catch in the haul.
(*3*) Discard and disposition information	.....	X	By 2400 hours, A.l.t., each day to record the previous day's discard and disposition information.
(*4*) Product information	.....	X	By 2400 hours, A.l.t., each day to record the previous day's production information.
(*5*) All other required information	X	.....	By 2400 hours, A.l.t., of the day following completion of production to record all other required information.
(*6*) Operator sign the completed logsheets	X	.....	By 2400 hours, A.l.t., of the day following the week-ending date of the weekly reporting period.
* * * * * * *			

* * * * *

(6) * * *

(ii) *Reporting time limits.* The operator of a mothership must record in the DCPL or submit via eLandings the information in the following table for each groundfish delivery within the specified time limit:

REPORTING TIME LIMITS, MOTHERSHIP

Required information	Record in DCPL	Submit via eLandings	Time limit for reporting
(A) All catcher vessel or buying station delivery information.	X	.....	Within 2 hours after completion of receipt of each groundfish delivery.
(B) Product information	.....	X	By 2400 hours, A.l.t., each day to record the previous day's production information.
(C) Discard or disposition information	.....	X	By 2400 hours, A.l.t., each day to record the previous day's discard/disposition.
(D) All other required information	X	.....	By 2400 hours, A.l.t., of the day following completion of production.
(E) Operator sign the completed logsheets	.....	.....	By 2400 hours, A.l.t., of the day following the week-ending date of the weekly reporting period.

* * * * * * *

* * * * *

* * * * *

(e) * * *

(2) * * *

(ii) Upon registration acceptance, the User must print, sign, and mail the User Agreement Form to NMFS at the address or fax number shown on the form. Confirmation will be e-mailed to indicate that the User is registered, authorized to use eLandings, and that the UserID and User's account are enabled.

* * * * *

(4) *Information entered automatically for eLandings landing report.* eLandings autofills the following fields from processor registration records (*see* paragraph (e)(2) of this section): UserID, processor company name, business telephone number, e-mail address, port of landing, operation type (for C/Ps, motherships, or SFPs), ADF&G processor code, and Federal permit number. The User must review the autofilled cells to ensure that they are accurate for the landing that is taking place. eLandings assigns a unique landing report number and an ADF&G electronic fish ticket number upon completion of data entry.

* * * * *

(5) * * *

(i) * * *

(B) *Landed scale weight.* The User for a SSP or SFP must record landed scale weight (to the nearest pound) for all retained species from groundfish deliveries by species code and delivery condition code. Obtain actual weights for each groundfish species received and retained by:

(*1*) Sorting according to species codes and direct weighing of that species, or

(*2*) Weighing the entire delivery and then sorting and weighing the groundfish species individually to determine their weights.

* * * * *

(ii) *Submittal time limit.* The User for an SSP or SFP must submit a landing report containing the information described in paragraph (e)(5)(i) of this section for each groundfish delivery from a specific vessel by 1200 hours, A.l.t., of the day following completion of the delivery. If the landed scale weight required in paragraph (e)(5)(i)(C) of this section is not available by this deadline, the User must transmit an estimated weight for each species by 1200 hours, A.l.t., of the day following completion of the delivery, and must submit a revised landing report with the landed scale weight for each species by 1200 hours, A.l.t., of the third day following completion of the delivery.

* * * * *

(6) * * *

(ii) *Submittal time limit.* The User for a mothership must submit a landing report containing the information described at paragraph (e)(6)(i) of this section for each groundfish delivery from a specific vessel by 2400 hours, A.l.t., of the day following the delivery.

* * * * *

(7) * * *

(iii) * * *

(C) *Landing completion.* The User for the Registered Buyer must submit an IFQ landing report, containing the information described in this paragraph (e)(7), within six hours after all IFQ halibut, CDQ halibut, and IFQ sablefish are offloaded from a specific vessel and prior to shipment or transfer of said fish from the landing site.

* * * * *

(8) * * *

(iii) * * *

(B) *Operation type and port code.* (*1*) If an SSP, the port code is pre-filled automatically (*see* § 679.5(e)(4)).

(*2*) If a catcher/processor, the at-sea operation type is pre-filled automatically.

(*3*) If an SFP and crab delivery is received in port, the at-sea operation type is pre-filled automatically (*see* § 679.5(e)(4)) and the User must enter the port code from Table 14a to this part.

(*4*) If an SFP and crab delivery is received at sea, the at-sea operation type is pre-filled automatically (*see* § 679.5(e)(4)) and the User must enter the appropriate crab regional designation (*see* § 680.40(b)(2)), shown below:

CR CRAB REGIONAL DESIGNATIONS

N	North Region	Landed in the Bering Sea subarea north of 56° 20′ N. lat.
S	South Region	Landed in any area in Alaska, not in the North Region.
W	West Region	West of 174° W. long. Only applicable for western Aleutian Islands golden king crab (WAG).

* * * * *

(D) *Crew and observer information.* (*1*) For crew size, enter the number of licensed crew aboard the vessel, including the operator.

(*2*) Number of observers aboard.

* * * * *

(9) * * *

(ii) *Submittal time limits.* (A) When active pursuant to paragraph (c)(5)(ii) of this section, the User for an SSP or SFP

must submit a production report by 1200 hours, A.l.t., each day to record the previous day's production information.

(B) If an SSP or SFP using eLandings is not taking deliveries over a weekend, the User or manager may submit the eLandings production report from Saturday and Sunday to NMFS by 1200 hours, A.l.t., on the following Monday.

* * * * *

(10) * * *

(iv) *Submittal time limits.* (A) Except as described in paragraph (e)(10)(iv)(B) of this section, when a mothership is active pursuant to paragraph (c)(6)(iv) of this section, a catcher/processor longline or pot gear is active pursuant to paragraph (c)(3)(iv)(B) of this section, or a catcher/processor trawl gear is active pursuant to paragraph (c)(4)(iv)(B) of this section, the User for a mothership or catcher/processor must submit a production report by 2400 hours, A.l.t., each day to record the previous day's production information.

(B) If a vessel is required to have 100 percent observer coverage or more, the User may submit a production report for Friday, Saturday, and Sunday no later than 2400 hours, A.l.t., on the following Monday.

* * * * *

(11) *Printing of landing reports, landing receipts, and production reports*—(i) The User daily must print a paper copy onsite or onboard of:

(A) Each landing report.

(B) If IFQ halibut, IFQ sablefish, or CDQ halibut, each sablefish/halibut IFQ landing receipt.

(C) If IFQ crab, each crab IFQ landing receipt.

(D) Each production report.

* * * * *

(12) *Retention and inspection of landing reports, landing receipts, and production reports*—(i) The User daily must retain a printed paper copy onsite or onboard of:

(A) Each landing report.

(B) If IFQ halibut, IFQ sablefish, or CDQ halibut, each sablefish/halibut IFQ landing receipt.

(C) If IFQ crab, each crab IFQ landing receipt.

(D) Each production report.

(ii) The User must make available the printed copies upon request of NMFS observers and authorized officers as indicated at paragraph (a)(5) of this section.

(f) * * *

(2) * * *

(iii) * * *

(B) * * *

(*1*) *Recording time limits.* The time limits for recording applicable information in the ELBs are the same as the recording time limits for DFLs and DCPLs in paragraphs (c)(3), (c)(4), and (c)(6) of this section.

* * * * *

(3) * * *

(i) * * *

(C) Print a copy of the ELB logsheet for the observer's use, if an observer is onboard the vessel, by 2400 hours, A.l.t., each day to record the previous day's ELB information.

* * * * *

3. In § 679.28, paragraph (b)(2)(v) is revised to read as follows.

§ 679.28 Equipment and Operational Requirements.

* * * * *

(b) * * *

(2) * * *

(v) *Where will scale inspections be conducted?* Scales inspections by inspectors paid by NMFS will be conducted on vessels tied up at docks in Kodiak, Alaska; Dutch Harbor, Alaska; and in the Puget Sound area of Washington State.

§§ 679.5, 679.28, 679.32, 679.40, 679.41, 679.42, 679.45, 679.80, 679.90, 679.94 [Amended]

4. At each of the locations shown in the "Location" column, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column for the number of times indicated in the "Frequency" column.

Location	Remove	Add	Frequency
§ 679.5(c)(3)(i)(B)(*2*)	sablefish landings data	sablefish landing data	1
§ 679.5(c)(3)(ii) heading	Data entry time limits	Reporting time limits	1
§ 679.5(c)(4)(i)(B)	catch-by-haul landings information	catch-by-haul landing information	1
§ 679.5(c)(4)(iv)(B)(*2*)	record in eLandings	submit in eLandings	1
§ 679.5(c)(4)(v)(C)	noon	2400 hours, A.l.t.	1
§ 679.5(e)(1)(i)	landings data	landing data	1
§ 679.5(e)(1)(iii) heading	Reporting of IFQ crab, IFQ halibut, and IFQ sablefish.	IFQ manual landing report	1
§ 679.5(e)(5) heading	SFP landings report	SFP landing report	1
§ 679.5(e)(5) introductory text	daily landings report	daily landing report	1
§ 679.5(e)(6) heading	Mothership landings report	Mothership landing report	1
§ 679.5(e)(6) introductory text	daily landings report	daily landing report	1
§ 679.5(e)(7) heading	Registered Buyer landings report	Registered Buyer landing report	1
§ 679.5(e)(7) introductory text	landings reports	landing reports	1
§ 679.5(e)(7)(ii)(A) and (iii)(B)	groundfish IFQ landing receipt	sablefish/halibut IFQ landing receipt	1
§ 679.5(e)(8) heading	Registered Crab Receiver (RCR) IFQ crab landings report.	Registered Crab Receiver (RCR) IFQ crab landing report.	1
§ 679.5(e)(8)(i) and (ii)	landings report	landing report	1
§ 679.5(e)(8)(iii)	must enter the following information (*see* paragraphs (e)(8)(iii)(A) through (C) of this section) into eLandings.	must submit information described at paragraphs (e)(8)(iii)(A) through (D) of this section into eLandings.	1
§ 679.5(e)(8)(vi)(B)	noon	1200 hours, A.l.t	1
§ 679.5(f)(3)(i)(A)	noon	2400 hours, A.l.t	1
§ 679.5(f)(4)(i)	noon	2400 hours, A.l.t	1
§ 679.28(d)(8)(i) introductory text, § 679.28.28(i)(3) introductory text, § 679.32(c)(1), § 679.41(m)(3) introductory text, § 679.42(d)(2)(iii) introductory text, § 679.80(e)(2), § 679.90(b)(2), § 679.90(f)(2), and § 679.94(a)(3).	*http://www.fakr.noaa.gov*	*http://alaskafisheries.noaa.gov*	1
§ 679.40(h)(2)	*groundfish IFQ landing receipt*	sablefish/halibut IFQ landing receipt	1
§ 679.45(a)(4)(iii)	*http://www.fakr.noaa.gov/ram*	*http://alaskafisheries.noaa.gov/ram*	1

5. Table 1a to part 679 is revised to read as follows:

TABLE 1a TO PART 679—DELIVERY CONDITION * AND PRODUCT CODES

[General use codes]

Description	Code
Belly flaps. Flesh in region of pelvic and pectoral fins and behind head (ancillary only)	19
Bled only. Throat, or isthmus, slit to allow blood to drain	03
Bled fish destined for fish meal (includes offsite production) *DO NOT RECORD ON PTR*	42
Bones (if meal, report as 32) (ancillary only)	39
Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached	37
Cheeks. Muscles on sides of head (ancillary only)	17
Chins. Lower jaw (mandible), muscles, and flesh (ancillary only)	18
Fillets, deep-skin. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets	24
Fillets, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail	23
Fillets with ribs, no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail	22
Fillets with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail	20
Fillets with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail	21
Fish meal. Meal from whole fish or fish parts; includes bone meal	32
Fish oil. Rendered oil from whole fish or fish parts. Record only oil destined for sale and not oil stored or burned for fuel onboard	33
Gutted, head on. Belly slit and viscera removed	04
Gutted, head off. Belly slit and viscera removed. (May be used for halibut personal use)	05
Head and gutted, with roe	06
Headed and gutted, Western cut. Head removed just in front of the collar bone, and viscera removed	07
Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed	08
Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed	10
Heads. Heads only, regardless where severed from body (ancillary only)	16
Kirimi (Steak). Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak	11
Mantles, octopus or squid. Flesh after removal of viscera and arms	36
Milt. In sacs, or testes (ancillary only)	34
Minced. Ground flesh	31
Other retained product. If product is not listed on this table, enter code 97 and write a description with product recovery rate next to it in parentheses	97
Pectoral girdle. Collar bone and associated bones, cartilage and flesh	15
Roe. Eggs, either loose or in sacs, or skeins (ancillary only)	14
Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted	12
Stomachs. Includes all internal organs (ancillary only)	35
Surimi. Paste from fish flesh and additives	30
Whole fish/or shellfish/food fish	01
Wings. On skates, side fins are cut off next to body	13
SHELLFISH ONLY:	
Soft shell crab	75
Bitter crab	76
Deadloss	79
Sections	80
Meat	81

Note: When using whole fish code, record round weights rather than product weights, even if the whole fish is not used.

* Delivery condition code: Condition of the fish or shellfish at the point it is weighed and recorded on the ADF&G fish ticket.

6. Table 1b to part 679 is revised to read as follows:

TABLE 1b TO PART 679—DISCARD AND DISPOSITION CODES [1]

Description	Code
Confiscation or seized	63
Deadloss (crab only)	79
Overage	62
Retained for future sale	87
Tagged IFQ Fish (Exempt from debit)	64
Whole fish/bait, not sold. Used as bait onboard vessel	92
Whole fish/bait, sold	61
Whole fish/discard at sea. Whole groundfish and prohibited species discarded by catcher vessels, catcher/processors, motherships, or tenders. *DO NOT RECORD ON PTR*	98
Whole fish/discard, damaged. Whole fish damaged by observer's sampling procedures	93
Whole fish/discard, decomposed. Decomposed or previously discarded fish	89
Whole fish/discard, infested. Flea-infested fish, parasite-infested fish	88

TABLE 1b TO PART 679—DISCARD AND DISPOSITION CODES [1]—Continued

Description	Code
Whole fish/discard, onshore. Discard after delivery and before processing by shoreside processors, stationary floating processors, and buying stations and in-plant discard of whole groundfish and prohibited species during processing. *DO NOT RECORD ON PTR*	99
Whole fish/donated prohibited species. Number of Pacific salmon or Pacific halibut, otherwise required to be discarded, that is donated to charity under a NMFS-authorized program	86
Whole fish/fish meal. Whole fish destined for meal (includes offsite production). *DO NOT RECORD ON PTR*	41
Whole fish/personal use, consumption. Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait	95
Whole fish/sold, for human consumption	60

Note: When using whole fish codes, record round weights rather than product weights, even if the whole fish is not used.
[1] Disposition Code: The intended use or disposal of the fish or shellfish.

7. Table 2a to part 679 is revised to read as follows:

TABLE 2a TO PART 679—SPECIES CODES: FMP GROUNDFISH

Species description	Code
Atka mackerel (greenling)	193
Flatfish, miscellaneous (flatfish species without separate codes)	120
FLOUNDER:	
Alaska plaice	133
Arrowtooth	121
Bering	116
Kamchatka	117
Starry	129
Octopus, North Pacific	870
Pacific cod	110
Pollock	270
ROCKFISH:	
Aurora (*Sebastes aurora*)	185
Black (BSAI) (*S. melanops*)	142
Blackgill (*S. melanostomus*)	177
Blue (BSAI) (*S. mystinus*)	167
Bocaccio (*S. paucispinis*)	137
Canary (*S. pinniger*)	146
Chilipepper (*S. goodei*)	178
China (*S. nebulosus*)	149
Copper (*S. caurinus*)	138
Darkblotched (*S. crameri*)	159
Dusky (*S. variabilis*)	172
Greenstriped (*S. elongatus*)	135
Harlequin (*S. variegatus*)	176
Northern (*S. polyspinis*)	136
Pacific Ocean Perch (*S. alutus*)	141
Pygmy (*S. wilsoni*)	179
Quillback (*S. maliger*)	147
Redbanded (*S. babcocki*)	153
Redstripe (*S. proriger*)	158
Rosethorn (*S. helvomaculatus*)	150
Rougheye (*S. aleutianus*)	151
Sharpchin (*S. zacentrus*)	166
Shortbelly (*S. jordani*)	181
Shortraker (*S. borealis*)	152
Silvergray (*S. brevispinis*)	157
Splitnose (*S. diploproa*)	182
Stripetail (*S. saxicola*)	183
Thornyhead (all *Sebastolobus* species)	143
Tiger (*S. nigrocinctus*)	148
Vermilion (*S. miniatus*)	184
Widow (*S. entomelas*)	156
Yelloweye (*S. ruberrimus*)	145
Yellowmouth (*S. reedi*)	175
Yellowtail (*S. flavidus*)	155
Sablefish (blackcod)	710
Sculpins	160
SHARKS:	
Other (if salmon, spiny dogfish or Pacific sleeper shark—use specific species code)	689
Pacific sleeper	692

TABLE 2a TO PART 679—SPECIES CODES: FMP GROUNDFISH—Continued

Species description	Code
Salmon	690
Spiny dogfish	691
SKATES:	
Big	702
Longnose	701
Other (If longnose or big skate—use specific species code)	700
SOLE:	
Butter	126
Dover	124
English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid, majestic	875
Turbot, Greenland	134

TABLE 2d TO PART 679—SPECIES CODES: NON-FMP SPECIES

General use	
Species description	Code
Arctic char, anadromous	521
Dolly varden, anadromous	531
Eels or eel-like fish	210
Eel, wolf	217
Greenling:	
Kelp	194
Rock	191
Whitespot	192
Grenadier, giant	214
Grenadier (rattail)	213
Jellyfish (unspecified)	625
Lamprey, pacific	600
Lingcod	130
Lumpsucker	216
Pacific flatnose	260
Pacific hagfish	212
Pacific hake	112
Pacific lamprey	600
Pacific saury	220
Pacific tomcod	250
Poacher (Family Algonidae)	219
Prowfish	215
Ratfish	714
Rockfish, black (GOA)	142
Rockfish, blue (GOA)	167
Rockfish, dark	173
Sardine, Pacific (pilchard)	170
Sea cucumber, red	895
Shad	180
Skilfish	715
Snailfish, general (genus *Liparis* and genus *Careproctus*)	218
Sturgeon, general	680
Wrymouths	211
Shellfish:	
Abalone, northern (pinto)	860
Clams:	
Arctic surf	812
Cockle	820
Eastern softshell	842
Pacific geoduck	815
Pacific littleneck	840
Pacific razor	830
Washington butter	810
Coral	899
Mussel, blue	855
Oyster, Pacific	880

TABLE 2d TO PART 679—SPECIES CODES: NON-FMP SPECIES—Continued

General use	
Species description	Code
Scallop, weathervane	850
Scallop, pink (or calico)	851
Shrimp:	
Coonstripe	864
Humpy	963
Northern (pink)	961
Sidestripe	962
Spot	965
Snails	890
Urchin, green sea	893
Urchin, red sea	892

9. Table 3 to part 679 is revised to read as follows:

TABLE 3 TO PART 679—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

Species code	FMP species	Product code											
		1, 41, 86, 92, 93, 95 Whole fish	3 Bled	4 Gutted head on	5 Gutted head off	6 H&G with Roe	7 H&G West cut	8 H&G East cut	10 H&G w/o Tail	11 Kirimi	12 Salted & split	13 Wings	14 Roe
110	Pacific Cod	1.00	0.98	0.85	.....	0.63	0.57	0.47	0.44	.....	0.45	.....	0.05
121	Arrowtooth/Kamchatka	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
122	Flathead Sole	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
123	Rock Sole	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
124	Dover Sole	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
125	Rex Sole	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
127	Yellowfin Sole	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
134	Greenland Turbot	1.00	0.98	0.90	.....	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
143	Thornyhead Rockfish	1.00	0.98	0.88	.....	0.55	0.60	0.50	.....	.....	.....	.....	.....
160	Sculpins	1.00	0.98	0.87	.....	.....	0.50	0.40	.....	.....	.....	.....	.....
193	Atka Mackerel	1.00	0.98	0.87	.....	0.67	0.64	0.61	.....	.....	.....	.....	.....
270	Pollock	1.00	0.98	0.80	.....	0.70	0.65	0.56	0.50	0.25	.....	.....	0.07
510	Smelts	1.00	0.98	0.82	.....	.....	0.71	.....	.....	.....	.....	.....	.....
511	Eulachon	1.00	0.98	0.82	.....	.....	0.71	.....	.....	.....	.....	.....	.....
516	Capelin	1.00	0.98	0.89	.....	.....	0.78	.....	.....	.....	.....	.....	.....
	Sharks	1.00	0.98	0.83	.....	.....	0.72	.....	.....	.....	.....	.....	.....
	Skates	1.00	0.98	0.90	.....	.....	.....	0.32	.....	.....	.....	0.32	.....
710	Sablefish	1.00	0.98	0.89	.....	.....	0.68	0.63	0.50	.....	.....	.....	.....
870	Octopus	1.00	0.98	0.81	.....	.....	.....	.....	.....	.....	.....	.....	.....
875	Squid	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Rockfish	1.00	0.98	0.88	.....	.....	0.60	0.50	.....	.....	.....	.....	.....
200	PACIFIC HALIBUT Conversion rates to Net Weight.	.....	.....	0.90	1.0	.....	.....	.....	.....	.....	.....	.....	.....

Species code	FMP species	Product code											
		15 Pectoral girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets with skin & ribs	21 Fillets with skin No ribs	22 Fillets with ribs No skin	23 Fillets skinless boneless	24 Fillets deep skin	30 Surimi	31 Mince
110	Pacific Cod	0.05	.....	0.05	.....	0.01	0.45	0.35	0.25	0.25	.....	0.15	0.5
121	Arrowtooth/Kamchatka	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
122	Flathead Sole	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
123	Rock Sole	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
124	Dover Sole	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
125	Rex Sole	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
127	Yellowfin Sole	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	0.18	.....
134	Greenland Turbot	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....
143	Thornyhead Rockfish	.....	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	.....	.....	.....
160	Sculpins	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
193	Atka Mackerel	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.15	.....
270	Pollock	.....	0.15	.....	.....	.....	0.35	0.30	0.30	0.21	0.16	[1]0.16 [2]0.17	0.22
510	Smelts	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....	.....
511	Eulachon	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
516	Capelin	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Sharks	.....	.....	.....	.....	.....	.....	0.30	0.30	0.25	.....	.....	.....
	Skates	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Species code	FMP species	Product code											
		15 Pectoral girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets with skin & ribs	21 Fillets with skin No ribs	22 Fillets with ribs No skin	23 Fillets skinless boneless	24 Fillets deep skin	30 Surimi	31 Mince
710	Sablefish	.....	.....	0.05	.....	.....	0.35	0.30	0.30	0.25	.....	.....	.....
870	Octopus	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
875	Squid	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Rockfish	.....	0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	.....	.....	.....
200	PACIFIC HALIBUT Conversion Rates to Net Weight.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Species code	FMP species	Product code							
		32 Meal	33 Oil	34 Milt	35 Stomachs	36 Mantles	37 Butterfly backbone removed	88, 89 Infested or decomposed fish	98, 99 Discards
110	Pacific Cod	0.17	.....	.....	.....	.....	0.43	0.00	1.00
121	Arrowtooth/Kamchatka	0.17	.....	.....	.....	.....	.....	0.00	1.00
122	Flathead Sole	0.17	.....	.....	.....	.....	.....	0.00	1.00
123	Rock Sole	0.17	.....	.....	.....	.....	.....	0.00	1.00
124	Dover Sole	0.17	.....	.....	.....	.....	.....	0.00	1.00
125	Rex Sole	0.17	.....	.....	.....	.....	.....	0.00	1.00
127	Yellowfin Sole	0.17	.....	.....	.....	.....	.....	0.00	1.00
134	Greenland Turbot	0.17	.....	.....	.....	.....	.....	0.00	1.00
143	Thornyhead Rockfish	0.17	.....	.....	.....	.....	.....	0.00	1.00
160	Sculpins	0.17	.....	.....	.....	.....	.....	0.00	1.00
193	Atka Mackerel	0.17	.....	.....	.....	.....	.....	0.00	1.00
270	Pollock	0.17	.....	.....	.....	.....	0.43	0.00	1.00
510	Smelts	0.17	.....	.....	.....	.....	.....	0.00	1.00
511	Eulachon	0.17	.....	.....	.....	.....	.....	0.00	1.00
516	Capelin	0.17	.....	.....	.....	.....	.....	0.00	1.00
	Sharks	0.17	.....	.....	.....	.....	.....	0.00	1.00
	Skates	0.17	.....	.....	.....	.....	.....	0.00	1.00
710	Sablefish	0.17	.....	.....	.....	.....	.....	0.00	1.00
870	Octopus	0.17	.....	.....	.....	0.85	.....	0.00	1.00
875	Squid	0.17	.....	.....	.....	0.75	.....	0.00	1.00
	Rockfish	.....	.....	.....	.....	.....	.....	0.00	1.00
200	PACIFIC HALIBUT Conversion Rates to Net Weight	.....	.....	.....	.....	.....	.....	0.00	0.75

[1] Standard pollock surimi rate during January through June.
[2] Standard pollock surimi rate during July through December.

Notes: To obtain round weight of groundfish, divide the product weight of groundfish by the table PRR. To obtain IFQ net weight of Pacific halibut, multiply the product weight of halibut by the table conversion rate. To obtain round weight from net weight of Pacific halibut, divide net weight by 0.75 or multiply by 1.33333.

10. Table 10 to part 679 is revised to read as follows:

BILLING CODE 3510–22–P

Table 10 to Part 679–-Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j)[6])														
Code	Species	Pollock	Pacific Cod	DW Flat (2)	Rex sole	Flathead Sole	SW Flat (3)	Arrowtooth	Sablefish	Aggregated rockfish[8]	SR/RE ERA (1)	DSR SEO (C/Ps only)[6]	Atka mackerel	Aggregated forage fish[10]	Skates (11)	Other species (7)
110	Pacific cod	20	n/a[9]	20	20	20	20	35	1	5	(1)	10	20	2	20	20
121	Arrowtooth	5	5	20	20	20	20	n/a	1	5	0	0	20	2	20	20
122	Flathead sole	20	20	20	20	n/a	20	35	7	15	7	1	20	2	20	20
125	Rex sole	20	20	20	n/a	20	20	35	7	15	7	1	20	2	20	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
152/ 151	Shortraker/ rougheye (1)	20	20	20	20	20	20	35	7	15	n/a	1	20	2	20	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	(1)	10	n/a	2	20	20
270	Pollock	na	20	20	20	20	20	35	1	5	(1)	10	20	2	20	20
710	Sablefish	20	20	20	20	20	20	35	n/a	15	7	1	20	2	20	20
Flatfish, deep-water[2]		20	20	n/a	20	20	20	35	7	15	7	1	20	2	20	20
Flatfish, shallow-water[3]		20	20	20	20	20	n/a	35	1	5	(1)	10	20	2	20	20
Rockfish, other (4)		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, pelagic (5)		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, DSR-SEO (6)		20	20	20	20	20	20	35	7	15	7	n/a	20	2	20	20
Skates[11]		20	20	20	20	20	20	35	1	5	(1)	10	20	2	n/a	20
Other species (7)		20	20	20	20	20	20	35	1	5	(1)	10	20	2	20	n/a
Aggregated amount of non-groundfish species[12]		20	20	20	20	20	20	35	1	5	(1)	10	20	2	20	20

Notes to Table 10 to Part 679						
1	Shortraker/rougheye rockfish					
		SR/RE	Shortraker rockfish (152)			
			Rougheye rockfish (151)			
		SR/RE ERA	Shortraker/rougheye rockfish in the Eastern Regulatory Area (ERA).			
	Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish					
2	Deep-water flatfish	Dover sole, Greenland turbot, and deep-sea sole				
3	Shallow-water flatfish	Flatfish not including deep-water flatfish, flathead sole, rex sole, or arrowtooth flounder				
4	Other rockfish	Western Regulatory Area	means slope rockfish and demersal shelf rockfish			
		Central Regulatory Area				
		West Yakutat District				
		Southeast Outside District	means slope rockfish			
		Slope rockfish				
		S. aurora (aurora)	*S. variegates* (harlequin)	*S. brevispinis* (silvergrey)		
		S. melanostomus (blackgill)	*S. wilsoni* (pygmy)	*S. diploproa* (splitnose)		
		S. paucispinis (bocaccio)	*S. babcocki* (redbanded)	*S. saxicola* (stripetail)		
		S. goodei (chilipepper)	*S. proriger* (redstripe)	*S. miniatus* (vermilion)		
		S. crameri (darkblotch)	*S. zacentrus* (sharpchin)	*S. reedi* (yellowmouth)		
		S. elongatus (greenstriped)	*S. jordani* (shortbelly)			
		In the Eastern GOA only, Slope rockfish also includes *S. polyspinis* (Northern)				
5	Pelagic shelf rockfish	*S. variabilis* (dusky)	*S. entomelas* (widow)	*S. flavidus* (yellowtail)		
6	Demersal shelf rockfish (DSR)	*S. pinniger* (canary)	*S. maliger* (quillback)	*S. ruberrimus* (yelloweye)		
		S. nebulosus (china)	*S. helvomaculatus* (rosethorn)			
		S. caurinus (copper)	*S. nigrocinctus* (tiger)			
		DSR-SEO = Demersal shelf rockfish in the Southeast Outside District (SEO) (see § 679.7(b)(4) and § 679.20 (j)).				
7	Other species	Sculpins	Octopus	Sharks	Squid	
8	Aggregated rockfish	Means rockfish as defined at § 679.2 except in:				
		Southeast Outside District	where DSR is a separate category for those species marked with a numerical percentage			
		Eastern Regulatory Area	where SR/RE is a separate category for those species marked with a numerical percentage			

Notes to Table 10 to Part 679			
9	n/a	Not applicable	
10	Aggregated forage fish (all species of the following taxa)		
		Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*)	209
		Capelin smelt (family *Osmeridae*)	516
		Deep-sea smelts (family *Bathylagidae*)	773
		Eulachon smelt (family *Osmeridae*)	511
		Gunnels (family *Pholidae*)	207
		Krill (order *Euphausiacea*)	800
		Laternfishes (family *Myctophidae*)	772
		Pacific Sand fish (family *Trichodontidae*)	206
		Pacific Sand lance (family *Ammodytidae*)	774
		Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family *Stichaeidae*)	208
		Surf smelt (family *Osmeridae*)	515
11	Skates Species and Groups		
		Big Skates (*Raja binoculata*)	702
		Longnose Skates (*R. rhina*)	701
		Other Skates (all skates that are not Big Skate or Longnose Skate)	700
12	Aggregated non-groundfish	All legally retained species of fish and shellfish, including IFQ halibut, that are not listed as FMP groundfish in Tables 2a and 2c to this part.	

BILLING CODE 3510–22–C

11. Table 21 to part 679 is revised to read as follows:

TABLE 21 TO PART 679—ELIGIBLE GOA COMMUNITIES, HALIBUT IFQ REGULATORY USE AREAS AND COMMUNITY GOVERNING BODY THAT RECOMMENDS THE COMMUNITY QUOTA ENTITY

Eligible GOA Community	Community Governing Body that recommends the CQE
May use halibut QS only in halibut IFQ regulatory areas 2C, 3A	
Angoon	City of Angoon.
Coffman Cove	City of Coffman Cove.
Craig	City of Craig.
Edna Bay	Edna Bay Community Association.
Elfin Cove	Community of Elfin Cove.
Gustavus	Gustavus Community Association.
Hollis	Hollis Community Council.
Hoonah	City of Hoonah.
Hydaburg	City of Hydaburg.
Kake	City of Kake.
Kasaan	City of Kasaan.
Klawock	City of Klawock.
Metlakatla	Metlakatla Indian Village.
Meyers Chuck	N/A.
Pelican	City of Pelican.
Point Baker	Point Baker Community.
Port Alexander	City of Port Alexander.
Port Protection	Port Protection Community Association.
Tenakee Springs	City of Tenakee Springs.
Thorne Bay	City of Thorne Bay.
Whale Pass	Whale Pass Community Association
May use halibut QS only in halibut IFQ regulatory areas 3A, 3B	
Akhiok	City of Akhiok.
Chenega Bay	Chenega IRA Village.
Chignik	City of Chignik.
Chignik Lagoon	Chignik Lagoon Village Council.
Chignik Lake	Chignik Lake Traditional Council.
Halibut Cove	N/A.
Ivanof Bay	Ivanof Bay Village of Council.
Karluk	Native Village of Karluk.
King Cove	City of King Cove.
Larsen Bay	City of Larsen Bay.
Nanwalek	Nanwalek IRA Council.
Old Harbor	City of Old Harbor.
Ouzinkie	City of Old Ouzinkie.
Perryville	Native Village of Perryville.
Port Graham	Port Graham Village Council.
Port Lions	City of Port Lions.
Sand Point	City of Sand Point.
Seldovia	City of Seldovia.
Tatitlek	Native Village of Tatitlek.
Tyonek	Native Village of Tyonek.
Yakutat	City of Yakutat.

[FR Doc. 2011–2981 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 29
Friday, February 11, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0057]

National Wildlife Services Advisory Committee; Reestablishment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reestablishment.

SUMMARY: We are giving notice that the Secretary of Agriculture will reestablish the National Wildlife Services Advisory Committee for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mrs. Joanne P. Garrett, Director, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737; (301) 734–7921.

SUPPLEMENTARY INFORMATION: The purpose of the National Wildlife Services Advisory Committee (the Committee) is to advise the Secretary of Agriculture on policies, program issues, and research needed to conduct the Wildlife Services program. The Committee also serves as a public forum enabling those affected by the Wildlife Services program to have a voice in the program's policies.

Done in Washington, DC, this 7th day of February 2011.

Pearlie S. Reed,

Assistant Secretary for Administration.

[FR Doc. 2011–3143 Filed 2–10–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0060]

National Wildlife Services Advisory Committee; Notice of Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that we have reestablished the Secretary's National Wildlife Services Advisory Committee for a 2-year period. The Secretary is soliciting nominations for membership on this Committee.

DATES: Consideration will be given to nominations received on or before April 12, 2011.

ADDRESSES: Nominations should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mrs. Joanne Garrett, Director, Operational Support Staff, WS, APHIS, USDA, 4700 River Road, Unit 87, Riverdale, MD 20737; (301) 734–7921.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee (the Committee) advises the Secretary of Agriculture on policies, program issues, and research needed to conduct the Wildlife Services program. The Committee also serves as a public forum enabling those affected by the Wildlife Services program to have a voice in the program's policies. The Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

We are soliciting nominations from interested organizations and individuals. An organization may nominate individuals from within or outside of its membership. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. II) and U.S. Department of Agriculture (USDA) Regulations 1041–1. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC this 7th day of February 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–3141 Filed 2–10–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Thorne Bay Ranger District; Alaska; Big Thorne Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for the Big Thorne Project located on Prince of Wales Island, part of the Thorne Bay Ranger District of the Tongass National Forest. This proposal is the multi-year timber sale component of a larger stewardship effort that will include opportunities such as restoration and enhancement activities that will be identified through other environmental analyses. The overall effort will be implemented through the use of various contracting authorities available to the Forest Service, including timber sale, service, and stewardship contracts, by combining some of the timber harvest activities of this project with restoration and enhancement activities to be analyzed separately. This EIS will consider the cumulative effects of the timber harvest activities and reasonably foreseeable stewardship activities in the area.

DATES: Comments concerning the scope of the analysis must be received by March 14, 2011. The draft environmental impact statement is expected in August 2011 and the final environmental impact statement is expected in February 2012.

ADDRESSES: Send written comments to: Thorne Bay Ranger District, Tongass National Forest, *Attn:* Big Thorne Project EIS, P.O. Box 19001, Thorne

Bay, AK 99919–0001. Comments may be hand-delivered to the Thorne Bay Ranger District, 1312 Federal Way, Thorne Bay, AK 99919–0001, *Attn:* Big Thorne Project EIS. Comments may also be sent via e-mail to: *comments-alaska-tongass-thornebay@fs.fed.us* or via facsimile to 907–828–3309, *Attn:* Big Thorne Project EIS. In all correspondence, please include your name, address, and organization name if you are commenting as a representative of an organization.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, District Ranger, Thorne Bay Ranger District, PO Box 19001, Thorne Bay, AK 99919–0001, (907) 828–3210 or James Kelly, Team Leader, Thorne Bay Ranger District, PO Box 19001, Thorne Bay, AK 99919–0001, (907) 828–3220.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the Big Thorne Project is to implement the Tongass Land Management Plan, aligned with the United States Department of Agriculture (USDA) Strategic Plan FY 2010–2015 and the Tongass National Forest transition strategy. The USDA Strategic Plan identifies key priorities and desired outcomes, such as the goals of rural prosperity and preservation and maintenance of forests, as well as means and strategies to achieve them. This project will help to provide an economically viable, reliable, long-term supply of timber that will support jobs for the communities of Southeast Alaska and facilitate the transition to a sustainable forest industry based on young-growth management. Forest restoration and enhancement activities on Prince of Wales Island will be integrated during project implementation to further accomplish the goals of the Strategic Plan. These activities could include the repair of road culverts that do not meet current standards for the passage of fish; recreation activities such as trail improvement; and wildlife and fisheries habitat improvement such as thinning or stream restoration.

Proposed Action

The Forest Service is proposing a multi-year timber sale project as part of a larger stewardship effort. The proposed action would harvest timber from approximately 5,800 acres of forested land using various sizes of timber sales, offered over a period of about 10 years, within the roaded land base on Prince of Wales Island. This harvest would include approximately 600 acres in Phase 2 lands of the Tongass Timber Adaptive Management Strategy and will be reserved for small timber sales. Approximately 37 miles of National Forest System and temporary roads would be constructed and about 26 miles of existing roads would be reconstructed. Preliminary analysis shows that an estimated 100 million board feet of sawtimber and utility wood could be made available to industry for harvest. Existing log transfer facilities would be used as needed. Harvest would include helicopter, ground-based, and cable yarding systems and could include even-aged, even-aged with reserves, two-aged with reserves, and uneven-aged harvest prescriptions to achieve stand objectives. All proposed activities would meet the standards and guidelines of the Tongass Land Management Plan.

While the Forest Service is proposing timber harvest in this project area and other areas on Prince of Wales Island, a collaborative process is ongoing to develop restoration and enhancement projects. The projects from this collaborative effort will be integrated with this timber sale project during implementation to provide stewardship opportunities. The effects of the reasonably foreseeable restoration and enhancement projects will be considered in this analysis, but are not part of this proposed action.

The restoration and enhancement activities will be generated from other planning documents, including the Cobble Landscape Assessment, Luck Lake Watershed Restoration Plan, the Prince of Wales and Surrounding Islands Access Travel Management Plan, and possibly others. In addition, because this project extends over several years, the Forest Service will integrate the project during implementation with future restoration and enhancement projects, including projects developed as a result of the Prince of Wales Island Young Growth Thinning Feasibility Study now being conducted. Examples of specific restoration and enhancement opportunities would include roads and transportation activities (*e.g.,* repairing "red pipes" or bridges, erosion control, vegetation removal, or road relocation); recreation activities (*e.g.,* campground and trails improvements, picnic sites, or vegetation management); young-growth stand improvement; and wildlife and fisheries habitat improvement projects (*e.g.,* beach fringe thinning, or placement of large woody debris in streams).

Possible Alternatives

The proposed action includes an estimated 100 million board feet from approximately 5,800 acres within the roaded land base of east-central Prince of Wales Island. Scoping comments will be used by the Forest Service to develop a range of alternatives in response to significant issues. A no-action alternative will be analyzed.

Responsible Official

The responsible official for the decision on this project is the Forest Supervisor, Tongass National Forest, Federal Building, 648 Mission Street, Ketchikan, Alaska 99901.

Nature of Decision To Be Made

The responsible official will decide whether or not to authorize timber harvest and associated road construction on Prince of Wales Island in the Big Thorne Project area.

Preliminary Issues

Preliminary potential issues which may be analyzed in the EIS include: The potential effects of the project on the Southeast Alaska timber supply, supporting the timber industry during the transition from old-growth harvest to young-growth management, road management, economic and rural stability, subsistence, deer, watersheds and fish, scenery, and inventoried roadless areas.

Permits or Licenses Required

U.S. Environmental Protection Agency

- Review Spill Prevention Control and Countermeasure Plan.

State of Alaska, Department of Environmental Conservation

- Certification of Compliance with Alaska Water Quality Standards (401 Certification);
- Storm water discharge permit/ National Pollutant Discharge Elimination System review under Section 402 of the Clean Water Act (402).

State of Alaska, Department of Natural Resources (DNR)

- Solid Waste Disposal Permit;
- Authorization for occupancy and use of tidelands and submerged lands.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. A scoping document

will be posted on the Tongass National Forest public Web site at: *http://www.fs.fed.us/r10/tongass/projects/projects.shtml* and a scoping letter will be mailed out in early February 2011. Individuals who want to be on the project mailing list should contact the Thorne Bay Ranger District at the address above. The scoping package will be available at future public open house meetings planned to be held in Thorne Bay, Coffman Cove, Craig, and Naukati, Alaska in late February or early March 2011. These meetings will be announced in the paper of record, the *Ketchikan Daily News*, as well as the *Island News*, Thorne Bay, Alaska.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: February 1, 2011.

Forrest Cole,

Forest Supervisor.

[FR Doc. 2011–3072 Filed 2–10–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on February 28, 2011 at the Lake Tahoe Community College, Aspen Room, 1 College Drive, South Lake Tahoe, CA 96150. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held February 28, 2011 beginning at 12:30 p.m. and ending at 3 p.m.

ADDRESSES: The meeting will be held at the Lake Tahoe Community College, Aspen Room, 1 College Drive, South Lake Tahoe, CA 96150.

For Further Information or to Request an Accommodation (One Week Prior to Meeting Date) Contact: Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda on February 28, 2011: (1) New member orientation, and (2) public comment.

All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: February 8, 2011.

Jeff Marsolais,

Acting Forest Supervisor.

[FR Doc. 2011–3255 Filed 2–10–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393, as amended by H.R. 1424 January 3, 2008) the Lob National Forest's Mineral County Resource Advisory Committee will meet on February 23, March 30, April 13, and May 11, 2011 at 6 p.m. until 8:30 p.m. in Superior, Montana for a business meeting. The meeting is open to the public.

DATES: February 23, 2011, March 30, 2011, April 13, 2011, and May 11, 2011.

ADDRESSES: The meetings will be held at the Superior Ranger District Office, 209 W. Riverside Ave, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Sharon Sweeney, Designated Federal Official (DFO), District Ranger, Superior Ranger District, Lob National Forest at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for meetings include the presentation of new project proposals and selection of proposals. If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent.

Dated: February 3, 2011.

Sharon Sweeney,

Designated Federal Official.

[FR Doc. 2011–2918 Filed 2–10–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne-Mariposa Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne-Mariposa Counties Resource Advisory Committee will meet on March 7, 2011, at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to convene the Tuolumne-Mariposa Counties Resource Advisory Committee for 2011, review membership and meeting dates, and determine outreach assignments to gather project proposals.

DATES: The meeting will be held March 7, 2011, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Beth Martinez, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370, (209) 532–3671; EMAIL *bethmartinez@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and introductions; (2) Review membership and meeting dates; (3) Determine outreach assignments to gather project proposals; (4) Public comment. The meeting is open to the public. Those in attendance will be provided the opportunity to address the Committee.

Dated: February 3, 2011.

Christina M. Welch,

Deputy Forest Supervisor.

[FR Doc. 2011–2854 Filed 2–10–11; 8:45 am]

BILLING CODE 3410–ED–P

DEPARTMENT OF AGRICULTURE

Forest Service

Big Horn County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Big Horn County Resource Advisory Committee will meet in Lovell, Wyoming. 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 is to hold the third meeting and to vote on project proposals.

DATES: The meeting will be held on March 3, 2011, and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the Big Horn Federal Savings Bank, 8 East Main Street, Lovell, Wyoming. Written comments about this meeting should be sent to Laurie Walters-Clark, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801. Comments may also be sent via e-mail to *comments-bighorn@fs.fed.us,* with the words Big Horn County RAC in the subject line. Facsimilies may be sent to 307–674–2668.

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 Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801. Visitors are encouraged to call ahead to 307–674–2600 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Laurie Walters-Clark, RAC Coordinator, USDA, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801; (307) 674–2627.

Individuals who use telecommunication devices for the hearing impaired may call 1–307–674–2604 between 8 a.m. and 5 p.m., Mountain time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members and Forest Service personnel, (2) Finalization and approval of Project Evaluation Criteria, (3) Project reviews, and (5) Public Comment; and (6) Project voting for recommendation. 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.

Dated: February 7, 2011.

Sandra E. Marquis,

Forest Administrative Officer.

[FR Doc. 2011–3074 Filed 2–10–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section I of the South Dakota and North Dakota State Technical Guides

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

ACTION: Notice of Availability of proposed changes in the South Dakota and North Dakota NRCS State Technical Guides for review and comment.

SUMMARY: The NRCS State Conservationists for South Dakota and North Dakota have determined that changes must be made to the NRCS State Technical Guides concerning State wetland mapping conventions. The two States are proposing to issue joint State wetland mapping conventions. The joint State wetland mapping conventions will be used as part of the technical documents to conduct wetland determinations on agriculture land as part of the National Food Security Act of 1985, as amended.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: For South Dakota, inquire in writing to Janet L. Oertly, State Conservationist, NRCS, Federal Building, 200 Fourth Street, SW., Room 203, Huron, South Dakota 57350; Telephone number (605) 352–1200; Fax number (605) 352–1288. Copies of the joint State wetland mapping conventions will be made available upon written request to the address shown above or on the South Dakota NRCS Web site: *http://www.sd.nrcs.usda.gov/Public_Notices.html.*

For North Dakota, inquire in writing to Paul J. Sweeney, State Conservationist, NRCS, 220 East Rosser Avenue, Federal Building, Room 270, Bismarck, North Dakota 58501; Telephone number (701) 530–2000; Fax number (701) 530–2109. Copies of the joint State wetland mapping conventions will be made available upon written request to the address shown above or on the North Dakota NRCS Web site: *http://www.nd.nrcs.usda.gov/Public_notices.html.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in South Dakota and North Dakota will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in South Dakota and North Dakota regarding disposition of those comments and a final determination of change will be made to the State wetland mapping conventions.

Dated: February 4, 2011.

Janet L. Oertly,

State Conservationist, Natural Resources Conservation Service, Huron, South Dakota.

Paul J. Sweeney,

State Conservationist, Natural Resources Conservation Service, Bismarck, North Dakota.

[FR Doc. 2011–3114 Filed 2–10–11; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 25, 2011, the United States Court of International Trade (CIT) sustained the Department of Commerce's ("the Department's") results of redetermination pursuant to the CIT's remand in *Essar Steel Limited* v. *United States,* 721 F. Supp. 2d 1285 (CIT 2010) ("*Essar* I"). *See Essar Steel Limited* v. *United States,* Slip Op. 11–10, Court No. 09–197 (January 25, 2011) ("*Essar II*"); *see also* Final Results of Redetermination Pursuant to Court Remand, dated October 28, 2010 ("Remand Redetermination") (found at *http://ia.ita.doc.gov/remands*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*") as clarified by *Diamond Sawblades Mfrs. Coalition* v.

United States, 626 F.3d 1374 (CAFC 2010) ("*Diamond Sawblades*"), the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final determination and is amending the final results of the administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products ("HRCS") from India covering the January 1, 2007, through December 31, 2007, period of review ("POR"). *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review,* 74 FR 20923 (May 6, 2009) ("*Final Results*"), and accompanying Issues and Decision Memorandum ("I&D Memorandum").

DATES: *Effective Date:* February 4, 2011.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration—International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2009, the Department published its final results in the countervailing duty administrative review of HRCS from India covering the POR of January 1, 2007, through December 31, 2007 ("fifth POR" or "fifth administrative review").[1] See Final Results. In the *Final Results,* the Department applied adverse facts available ("AFA") pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended ("the Act"), in finding that Essar used and benefited from the nine subprograms under the State Government of Chhattisgarh Industrial Policy ("CIP"). *See Final Results,* and accompanying I&D Memorandum at "SGOC's Industrial Policy" section, "SGOC Industrial Policy 2004–2009" section, and Comment 2. In *Essar I,* the CIT remanded this issue, explaining that the Department's conclusions in its July 2010 remand redetermination regarding the fourth administrative review of the countervailing duty order on HRCS from India ("fourth POR" or "fourth administrative review"), which found that Essar did not benefit from the CIP, cast "grave doubt" upon the Department's findings that Essar benefited from the CIP during the fifth POR. *See Essar I* at 1300; *see also* Final Results of Redetermination Pursuant to Court Remand, in *United States Steel Corp.* v. *United States,* CIT No., 08–239 (Department of Commerce July 15, 2010) ("Fourth Administrative Review Redetermination") at 5–6, 22–23. Thus, the CIT ordered the Department to reopen and place on the administrative record of the fifth administrative review certain documents from the fourth administrative review remand proceeding, and to consider those documents in its reassessment of whether Essar benefited from the CIP.

On October 28, 2010, the Department issued its final results of redetermination pursuant to *Essar I.* The remand redetermination explained that, in accordance with the CIT's order, and under respectful protest, the Department placed certain documents from the fourth administrative review remand proceeding on the record of the fifth administrative review. In light of certain statements by the CIT in *Essar I* and those documents that the CIT ordered the Department to place on the administrative record, the Department reassessed whether Essar benefited from the CIP during the fifth POR and determined that Essar did not benefit from the CIP during the fifth POR. *See* Remand Redetermination at 26. The Department's redetermination resulted in a change to the *Final Results* concerning Essar's net subsidy rate for the CIP from 54.69 percent to zero. Therefore, Essar's total net countervailable rate from the *Final Results,* 76.88 percent, decreased by 54.69 percentage points, to a total net countervailable subsidy rate of 22.19 percent. The CIT sustained the Department's remand redetermination on January 25, 2011. *See Essar II.*

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(c) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's judgment in *Essar I* on January 25, 2011, sustaining the Department's decision in the Remand Redetermination that Essar did not benefit from the CIP during the fifth POR constitutes a final decision of that court that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, the total net countervailable subsidy rate for Essar for the period January 1, 2007, through December 31, 2007, is 22.19 percent. The cash deposit rate for Essar is also 22.19 percent. The Department will instruct U.S. Customs and Border Protection to collect cash deposits for Essar at the rate indicated.

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess countervailing duties on entries of the subject merchandise during the POR from Essar based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with sections 516A(c), 751(a), and 777(i)(1) of the Act.

Dated: February 7, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–3117 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] The administrative review covering the 2007 period is the fifth administrative review of the countervailing duty order on HRCS from India. The administrative review covering the 2006 period is the "fourth" administrative review. *See Final Results* and the accompanying I&D Memorandum at "Sale of High-Grade Iron Ore for LTAR" section (referring to the 2006 administrative review as the fourth administrative review).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 19, 2011, the Department of Commerce ("Department") published the final results of the antidumping duty administrative review of silicon metal from the People's Republic of China ("PRC"). *See Silicon Metal From the People's Republic of China: Final Results and Partial Rescission of the 2008–2009 Administrative Review of the Antidumping Duty Order,* 76 FR 3084 (January 19, 2011) ("*Final Results*"). The period of review is June 1, 2008, through May 31, 2009. We are amending our *Final Results* to correct ministerial errors made in the calculation of the antidumping duty margin for Shanghai Jinneng International Trade Co., Ltd. ("Shanghai Jinneng") pursuant to section

751(h) of the Tariff Act of 1930, as amended ("the Act").

DATES: *Effective Date:* February 11, 2011.

FOR FURTHER INFORMATION CONTACT: Demitri Kalogeropoulos or Andrew Medley, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2623 and (202) 482–4987, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 21, 2011, Globe Metallurgical Inc. ("Globe"), Petitioner, submitted ministerial error allegations with respect to the *Final Results* of the June 1, 2008, through May 31, 2009, administrative review. On January 26, 2011, Shanghai Jinneng submitted a letter alleging that Globe's submission was not timely filed and should be rejected; it also claimed it was prejudiced by accepting Globe's ministerial allegations. On January 31, 2011, Globe submitted a response to Shanghai Jinneng's letter.

In accordance with 19 CFR 351.224(b), on January 14, 2011, the Department notified both parties of the availability of disclosure documents for pickup from the Administrative Protective Orders ("APO") office. *See* Shanghai Jinneng's letter dated January 26, 2011, at Exhibit 1. According to APO office records, Mayer Brown, counsel to Shanghai Jinneng, received the disclosure documents on Friday, January 14, 2011. APO records indicate that DLA Piper, counsel to Globe, received disclosure documents on Tuesday, January 18, 2011, the next business day, because Monday, January 17, 2011, was a Federal holiday. *See* Memorandum to the file titled "Disclosure of Documents for Final Results" dated January 28, 2011.

The Department's regulations at 19 CFR 351.224(c)(ii) state that a party to the proceeding must file comments concerning ministerial errors within five days after the date on which the Secretary released disclosure documents to that party. Because the Secretary released the disclosure documents on January 14, 2011, ministerial error allegations were due on January 19, 2011. However, 19 CFR 351.302(b) provides that, unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this part.

We have determined that good cause exists for extending the deadline set forth in 19 CFR 351.224(c) and accepting Globe's ministerial error allegations, which were filed on January 21, 2011. In its January 31, 2011 letter, counsel for Globe states that it was not able to receive the documents on the day of release because it did not have a messenger available who was authorized to handle APO documents, and was informed by a Department official on Tuesday, January 18, 2011, that the five-day period for submitting ministerial error allegations began on January 18, 2011. While the Department finds that because it informed Globe that the five-day period began on January 18, 2011, rather than January 14, 2011, it should have informed Shanghai Jinneng that the deadline had been extended, we disagree with Shanghai Jinneng that it has been prejudiced. Shanghai Jinneng neither submitted ministerial error allegations nor requested that the January 19, 2011, deadline be extended so that it could file allegations after this deadline. In addition, Shanghai Jinneng was able to respond to Globe's allegations, and did comment on its submission on January 26, 2011. For these reasons, the Department has determined that good cause exists to extend the deadline and has accepted Globe's ministerial error allegations.

Ministerial Errors

A ministerial error as defined in section 751(h) of the Act includes "errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial." *See also* 19 CFR 351.224(f).

After analyzing Globe's comments, we have determined, in accordance with 19 CFR 351.224(e), that ministerial errors existed in certain calculations in the *Final Results.* Correction of these errors results in a change to Shanghai Jinneng's final antidumping duty margin. For a detailed discussion of these ministerial errors, as well as the Department's analysis, *see* Final Results of the 2008–2009 Administrative Review of the Antidumping Duty Order for Silicon Metal from the People's Republic of China: Allegation of Ministerial Errors, dated concurrently with this notice ("Ministerial Error Memo"). The Ministerial Error Memo is on file in the Central Records Unit, room 7046 in the main Department building.

Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the administrative review of silicon metal from the PRC. Listed below is the revised weighted-average dumping margin resulting from these amended final results:

Exporter	Original final margin	Amended final margin
Shanghai Jinneng International Trade Co., Ltd	3.14%	3.30%

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct

CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the amended final results of these reviews.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively on any entries made on or after January 19, 2011, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Shanghai Jinneng, the cash deposit rate will be the amended final margin rate shown above in the "Ministerial Errors" section of this notice; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 139.49 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: February 7, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–3135 Filed 2–10–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Amended Final Results of the 2008–2009 Antidumping Duty Administrative Review: Pure Magnesium From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 23, 2010, the Department of Commerce ("the Department") published in the **Federal Register** the *Final Results* of the 2008–2009 administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC").[1] The period of review ("POR") covers May 1, 2008, through April 30, 2009. We are amending our *Final Results* to correct ministerial errors made in the calculation of the antidumping duty margin for Tianjin Magnesium International Co., Ltd. ("TMI"), pursuant to section 751(h) of the Tariff Act of 1930, as amended ("Act").

DATES: *Effective Date:* (December 23, 2010).

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2010, the Department published the *Final Results* of the 2008–2009 administrative review of the antidumping duty order on pure magnesium from the PRC. In accordance with 19 CFR 351.224(b), the Department disclosed the details of its calculations in the *Final Results* to all interested parties on December 20, 2010.[2] On December 23 and 27, 2010, respectively, US Magnesium LLC ("Petitioner") and TMI filed timely ministerial error allegations with respect to the Department's antidumping duty margin calculations for TMI in the *Final Results.* Petitioner provided rebuttal comments concerning TMI's ministerial error allegation on January 3, 2011. No other party provided ministerial error comments regarding the *Final Results* of this review.

Scope of the Order

Merchandise covered by this order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra pure" magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as "off-specification pure" magnesium).

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by this order are currently classifiable

[1] *See Pure Magnesium From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010) ("*Final Results*"), and accompanying Issues and Decision Memorandum.

[2] *See* Memorandum to the File, "Pure Magnesium from the People's Republic of China: Release of the Business-Proprietary Version of TMI's Final Analysis Memorandum," dated December 20, 2010.

under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Ministerial Errors

A ministerial error is defined in section 751(h) of the Tariff Act of 1930, as amended ("the Act"), and further clarified in 19 CFR 351.224(f) as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the {Secretary} considers ministerial."

After analyzing all interested parties' allegations and rebuttals, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), we have determined that we made ministerial errors in the normal value and net U.S. price calculations for TMI in the *Final Results.* For a detailed discussion of these ministerial errors, as well as the Department's analysis of the errors and allegations, *see* the Memorandum to the File, "Ministerial Error Memorandum for the Final Results of the 2008–2009 Administrative Review of Pure Magnesium From the People's Republic of China, dated February 4, 2011, on file in the Central Records Unit, room 7047 in the main Department building.

Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the administrative review of pure magnesium from the PRC. The revised weighted-average dumping margin TMI is as follows:

Exporter	Original weighted-average percent margin	Amended weighted-average percent margin
Tianjin Magnesium International Co., Ltd	0.73	0.80

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the *Final Results* of this review. For assessment purposes, we calculated exporter/importer- (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer-(or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determined in the *Final Results* of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the amended final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective on any entries made on or after December 23, 2010, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate shown for those companies (except if the rate is *de minimis, i.e.,* less than 0.50 percent, a zero cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: February 3, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–3139 Filed 2–10–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches) From Japan: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Joshua Morris or Jessica Forton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1779 and (202) 482–0509, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2010, the Department of Commerce ("the Department") published a notice of initiation of the administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan, covering the review period June 1, 2009, through May 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 75 FR 44224, 44225 (July 28, 2010). The current deadline for the preliminary results of this administrative review is March 2, 2011.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The Department requires additional time to review claims made by certain respondents that they had no shipments of subject merchandise to the United States during the period of review. This entails not only reviewing company data but also information from U.S. Customs and Border Protection. As such, it is not practicable to complete this review within the originally anticipated time limit (*i.e.,* by March 2, 2011). Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days to not later than June 30, 2011, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: February 3, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–3013 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (RE&EEAC) will hold a meeting to hear presentations from the Departments of Energy and Commerce on how their programs support the competitiveness of U.S. renewable energy and energy efficiency companies, to review subcommittee reports on the connection between market conditions within the United States and U.S. export potential, and to discuss future work for 2011.

DATES: March 1, 2011, from 9 a.m. to 3:30 p.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Room 1412, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Brian O'Hanlon, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–3492; e-mail: *brian.ohanlon@trade.gov.* This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the RE&EEAC pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) on July 14, 2010. The RE&EEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to expand the international competitiveness of the U.S. renewable energy and energy efficiency industries. The RE&EEAC held its first meeting on December 7, 2010.

The meeting is open to the public and the room is disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Brian O'Hanlon at the contact information above by 5 p.m. EST on Thursday, February 24, in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill. A limited amount of time, from 3 p.m.–3:30 p.m., will be available for pertinent brief oral comments from members of the public attending the meeting.

Any member of the public may submit pertinent written comments concerning the RE&EEAC's affairs at any time before or after the meeting. Comments may be submitted to *brian.ohanlon@trade.gov* or to the Renewable Energy and Energy Efficiency Advisory Committee, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, Room 4830, 1401 Constitution Avenue, NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later than 5 p.m. EST on Thursday, February 24, 2011, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of RE&EEAC meeting minutes will be available within 30 days of the meeting.

Dated: February 4, 2011.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2011–3095 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Tuesday, February 28, 2011, at 10 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 4830, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. David Kincaid, Office of Energy & Environmental Industries, International Trade Administration, Room 4053, 1401 Constitution Ave., NW., Washington, DC 20230. (Phone: 202–482–1706; Fax: 202–482–5665; e-mail: *David.Kincaid@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable United States regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the February 28, 2011 CINTAC meeting is as follows:

Public Session

1. Opening remarks.
2. Trade Promotion Activities Update, including U.S. Japan Global Nuclear Energy Cooperation Working Group, U.S. industry program at the International Atomic Energy Agency, and other missions as appropriate.
3. Public comment period.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app 2 §§ (10)(a)(1) and 10(a)(3).

The open session will be disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. David Kincaid at the contact information below by 5 p.m. EDT on Friday, February 18, 2011 in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Kincaid and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5 p.m. EDT on Friday, February 18, 2011. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration (ITA) may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave., NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5 p.m. EDT on Friday, February 18, 2011. Comments received after that date will be distributed to the members but may not be considered at the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 2, 2011, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app 2 § (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in (5 U.S.C. app 2 §§ (10)(a)(1) and 10(a)(3). The portion of the meeting dealing with matters requiring disclosure of trade secrets and commercial or financial information as described in 5 U.S.C. 552b(c)(4) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app 2 §§ (10)(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: February 6, 2011.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2011–3047 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty order on certain new pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (PRC) for the period January 1, 2009, through December 31, 2009, with respect to the one remaining respondent company: Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC). This rescission is based on the timely withdrawal by TUTRIC on January 25, 2011, of its request for a review. Since TUTRIC was the only remaining respondent company subject to review, this notice also serves to rescind the entire administrative review.

DATES: *Effective Date:* February 11, 2011.

FOR FURTHER INFORMATION CONTACT: Emily Halle or Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0176 or (202) 482–4261, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2010, the Department published a notice of opportunity to request an administrative review of the countervailing duty order on OTR Tires from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 53635 (September 1, 2010). TUTRIC timely requested an administrative review of the countervailing duty order on OTR Tires from the PRC for the period January 1, 2009, through December 31, 2009. In addition, the Department received timely requests from eight other parties: Shandong Huitong Tyre Co., Ltd.; Qingdao Hengda Tyres Co., Ltd.; Qingdao Sinorient International Ltd.; Qingdao Qizhou Rubber Co., Ltd.; Techking Tires Limited; Qingda Etyre International Trade Co., Ltd.; Wengdeng Sanfeng Tyre Co., Ltd.; and Guizhou Tyre Co., Ltd., along with its affiliates, Guizhou Advanced Rubber Co., Ltd., and Guizhou Tyre Import and Export Corporation (collectively, Guizhou Tyre). No other party requested a review of these parties. In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), the Department published a notice initiating an administrative review of the countervailing duty order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349, 66351 (October 28, 2010).

On November 30, 2010, the Department rescinded the review with respect to Guizhou Tyre, pursuant to a timely withdrawal of its request for review. *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Partial Rescission of Countervailing Duty Administrative Review,* 75 FR 74003 (November 30, 2010). On December 10, 2010, the Department rescinded the review with respect to: Shandong Huitong Tyre Co., Ltd.; Qingdao Hengda Tyres Co., Ltd.; Qingdao Sinorient International Ltd.; Qingdao Qizhou Rubber Co., Ltd.; Techking Tires Limited; Qingda Etyre International Trade Co., Ltd.; and Wengdeng Sanfeng Tyre Co., Ltd., pursuant to timely withdrawals of their requests for review. *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Rescission, in Part, of Countervailing Duty Administrative Review,* 75 FR 76956 (December 10, 2010).

Rescission of Countervailing Duty Administrative Review

The Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation. *See* 19 CFR 351.213(d)(1). TUTRIC timely withdrew its request on January 25, 2011, within the 90-day deadline. Therefore, as no other party requested a review of TUTRIC, and as we have already rescinded the review of all other parties initially subject to this segment of the proceeding, in accordance with 19 CFR 351.213(d)(1), the Department is fully rescinding this administrative review of the countervailing duty order.

Assessment

Entries exported by TUTRIC are subject to the injunction issued by the U.S. Court of International Trade pursuant to ongoing litigation. Once the injunction is lifted, the Department will instruct U.S. Customs and Border Protection to assess countervailing duties on all appropriate entries. For TUTRIC, countervailing duties shall be assessed at rates equal to the cash deposit or bonding rate of the estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: February 7, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–3132 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 110107015–0497–02]

Announcing Draft Federal Information Processing Standard 180–4, Secure Hash Standard, and Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the Draft Federal Information Processing Standard (FIPS) 180–4, Secure Hash Standard (SHS), for public review and comment. The draft standard, designated "Draft FIPS 180–4" is proposed to supersede FIPS 180–3.

DATES: Comments must be received on or before May 12, 2011.

ADDRESSES: Written comments may be sent to: Chief, Computer Security Division, Information Technology Laboratory, Attention: Comments on Draft FIPS 180–4, 100 Bureau Drive—Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

Electronic comments may be sent to: *Proposed180–4@nist.gov.*

The current FIPS 180–3 and its proposed replacement, Draft FIPS 180–4, are available electronically at *http://csrc.nist.gov/publications/index.html.*

Comments received in response to this notice will be published electronically at *http://csrc.nist.gov/CryptoToolkit/.*

FOR FURTHER INFORMATION CONTACT: Elaine Barker, Computer Security Division, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930, *phone:* 301–975–2911, *e-mail: elaine.barker@nist.gov;* or Quynh Dang, Computer Security Division, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930, *e-mail: quynh.dang@nist.gov.*

SUPPLEMENTARY INFORMATION: NIST publishes this notice to request comments on Draft FIPS 180–4, Secure Hash Standard (SHS), which updates FIPS 180–3, Secure Hash Standard, which was approved in October 2008. FIPS 180–3 specifies five secure hash algorithms (SHAs): SHA–1, SHA–224, SHA–256, SHA–384 and SHA–512. These algorithms produce 160, 224, 256, 384, and 512-bit outputs, respectively, which are called message digests. Draft FIPS 180–4 would update FIPS 180–3 by providing a general procedure for creating an initialization hash value,

adding two additional secure hash algorithms, SHA–512/224 and SHA–512/256, to the standard, and removing a restriction that padding must be done before hash computation begins, which was required in FIPS 180–3. NIST proposes adding SHA–512/224 and SHA–512/256 to Draft FIPS 180–4 because they may be more efficient alternatives to SHA–256 on platforms that are optimized for 64-bit operations. Removing the restriction on the padding operation in the secure hash algorithms will potentially create more flexibility and efficiency in implementing the secure hash algorithms in many computer network applications. Examples of the implementation of the secure hash algorithms SHA–1, SHA–224, SHA–256, SHA–384, SHA–512, SHA–512/224 and SHA–512/256, can be found at *http://www.nist.gov/CryptoToolkitExamples.* If approved by the Secretary of Commerce, Draft FIPS 180–4 will supersede FIPS 180–3.

Prior to the approval of this proposed standard by the Secretary of Commerce, it is essential that consideration be given to the needs and views of the public, users, the information technology industry, and Federal, State, and local government organizations. The purpose of this notice is to solicit such views. Interested parties may view or download the proposed standard at *http://csrc.nist.gov/publications/drafts.html.*

Authority: NIST's activities to develop computer security standards to protect Federal sensitive (unclassified) systems are undertaken pursuant to specific responsibilities assigned to NIST in Section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104–106), the Computer Security Act of 1987 (Pub. L. 100–235), and Appendix III to Office of Management and Budget Circular A–130.

Dated: February 7, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–3129 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, March 2, 2011, from 8:30 a.m. until 4:45 p.m., Thursday, March 3, 2011, from 8:30 a.m. until 5:30 p.m., and Friday, March 4, 2011 from 8:30 a.m. until 12:30 p.m. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, March 2, 2011, from 8:30 a.m. until 4:45 p.m., Thursday, March 3, 2011, from 8:30 a.m. until 5:30 p.m., and Friday, March 4, 2011 from 8:30 a.m. until 12:30 p.m.

ADDRESSES: The meeting will take place at the Homewood Suites by Washington, 1475 Massachusetts Avenue, NW., Washington, DC 20005 on March 2, 3, and 4, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Annie Sokol, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2006.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the ISPAB will meet on Wednesday, March 2, 2011, from 8:30 a.m. until 4:45 p.m., Thursday, March 3, 2011, from 8:30 a.m. until 5:30 p.m., and Friday, March 4, 2011 from 8:30 a.m. until 12:30 p.m. All sessions will be open to the public. The ISPAB was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html.*

The agenda is expected to include the following items:

—Direct Hiring Panel discussion on Federal hiring process, especially for technical and security personnel,
—Presentation on National Strategy for Trusted Identities in Cyberspace (NSTIC) to discuss implementation plan,
—Presentation on Science of Security relating to computer security research,
—Presentation on Access of Classified Information,
—Medical Device Vendor Panel discussion of security, anti-virus and patching issues,
—CIO Panel discussion on Security of Federal Automated Information Resources (Appendix III to OMB Circular No. A–130),
—Update on the Federal Risk and Authorization Management Program (FedRAMP),
—DHS updates, including DOD–DHS personnel exchange MOU,
—Presentation on HSPD 12 (Policy for a Common Identification Standard for Federal Employees and Contractors) and progress of logical access,
—Panel discussion on lessons learned from National Cybersecurity and Communications, Integration Center and CyberStorm,
—A panel of Inspector Generals regarding privacy and security, and
—Update on NIST Computer Security Division.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Friday, March 4, 2011, at 9:30 a.m.–10 a.m.). Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact Ms. Annie Sokol at the telephone number indicated above. In addition, written statements are invited and may be submitted to the ISPAB at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Approximately 15 seats will be available for the public and media.

Dated: February 7, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–3122 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 101006483–1035–02]

Correction to Notice Soliciting Comments on Proposed Voluntary Product Standard PS 2–10 and Reopening of Comment Period

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Correction to notice and request for comments.

SUMMARY: On October 29, 2010, the National Institute of Standards and Technology published a notice in the

Federal Register requesting comments on Proposed Voluntary Product Standard PS 2–10. The title of the notice incorrectly gave the title of Proposed Voluntary Product Standard PS 2–10 as "Structural Plywood." The correct title of the proposed standard is "Performance Standard for Wood-Based Structural-Use Panels," and appears in the body of the notice. NIST is issuing this notice to inform the public of the correct title of the October 29 notice and to reopen the comment period to encourage the public to submit comments on the proposed standard.

DATES: Written comments regarding the proposed revision, should be submitted to the Standards Services Group, NIST, no later than March 14, 2011.

ADDRESSES: An electronic copy (an Adobe Acrobat File) of the proposed standard, PS 2–10, can be obtained at the following Web site: *http://gsi.nist.gov/global/index.cfm/L1–5/l2–44/A–355*. This site also includes an electronic copy of PS 2–04 (the existing standard) and a summary of significant changes. Written comments on the proposed revision should be submitted to David F. Alderman, Standards Services Group, NIST, 100 Bureau Drive, Stop 2150, Gaithersburg, MD 20899–2150. Electronic comments may be submitted to *david.alderman@nist.gov*.

FOR FURTHER INFORMATION CONTACT: David F. Alderman, Standards Services Group, National Institute of Standards and Technology, *telephone:* (301) 975–4019; *fax:* (301) 975–4715, *e-mail: david.alderman@nist.gov.*

SUPPLEMENTARY INFORMATION: On October 29, 2010, the National Institute of Standards and Technology published a notice in the **Federal Register** requesting comments on Proposed Voluntary Product Standard PS 2–10 (75 FR 66734). The title of the notice incorrectly gave the title of Proposed Voluntary Product Standard PS 2–10 as "Structural Plywood." The correct title of the proposed standard is "Performance Standard for Wood-Based Structural-Use Panels," and appears in the body of the notice. NIST is issuing this notice to inform the public of the correct title of the October 29 notice and to extend the period for submission of comments on the proposed standard.

The deadline for submission of comments given in the October 29 notice was November 29, 2010. Due to confusion that may have been caused by the incorrect title of the October 29 notice, NIST is reopening the public comment period. In addition, comments received between November 29, 2010 and publication of this notice are deemed timely.

As stated in the October 29, 2010 notice requesting public comments, the National Institute of Standards and Technology (NIST) is proposing to revise Voluntary Product Standard (PS) 2–04, Performance Standard for Wood-Based Structural-Use Panels. This revised standard, PS 2–10, was prepared by the Standing Committee for PS 2 and establishes requirements, for those who choose to adhere to the standard, for the structural criteria to assess the acceptability of wood-based structural-use panels for construction sheathing and single-floor applications. It also provides a basis for common understanding among the producers, distributors, and the users of these products. Interested parties are invited to review the proposed standard and submit comments to NIST. For the public's convenience, NIST has reprinted below the information contained in the October 29, 2010 notice.

Proposed Voluntary Product Standard PS 2–10 establishes structural criteria for assessing the acceptability of wood-based structural-use panels for construction sheathing and single-floor application, and provides a basis for common understanding among the producers, distributors, and the users of these products. After conducting a review of the current standard, PS 2–04, the Standing Committee for PS 2 determined that updates were needed to reflect current industry practices, and developed this proposal through meetings to review the standard and propose needed changes. The proposed standard does not address non-structural issues such as resistance to biological agents. Applications for structural plywood other than construction sheathing and single-floor sheathing may require additional engineering considerations that are not covered by this document.

The proposed revision of the standard has been developed and is being processed in accordance with Department of Commerce provisions in Title 15 of the U.S. Code of Federal Regulations, Part 10, *Procedures for the Development of Voluntary Product Standards,* as amended (published June 20, 1986). The Standing Committee for PS 2 is responsible for maintaining, revising, and interpreting the standard, and is comprised of producers, distributors, users, and others with an interest in the standard. Committee members voted on the revision, which was approved unanimously. The Committee then submitted a report to NIST along with the voting results and the draft revised standard. NIST has determined that the revised standard should be issued for public comment.

The revision includes the following changes:

- *Panel thickness:* In order to resolve the inconsistency with NIST standards used by "weights and measures" regulators, PS 2 will require labeling with both a "Performance Category," which is a fractional label such as 15/32, and a decimal thickness declaration, such as "THICKNESS 0.438 IN." The Performance Category will maintain consistency with the panel thickness specifications required in the U.S. model codes. The Performance Category panel labeling will permit the abbreviations "PERF CAT," "CAT" or "Category." The decimal thickness declaration will help assure that panels are compliant with weights and measures regulations.
- Two nonmandatory appendices were added to provide guidance on NIST Handbook 130 "Packaging and Labeling Regulations," and to provide suggested thickness labeling.
- Nonmandatory appendices on attributes related to Green Building and Formaldehyde were added.
- A nonmandatory appendix on the history of PS 2 was added.
- The moisture content specifications for the "dry," "wet/redry" and "wet" test conditions were clarified in various sections of the standard.
- The tables containing performance requirements were modified to provide clarity and references to the sections of the standard that provide the test methods and pass/fail criteria used during the qualification process.
- The original fastener holding requirements for sheathing were based on thin plywood panels made with Group 4 species. Those panels are not representative of current sheathing panels. In addition, some U.S. model code requirements for wall sheathing were made more stringent, such that the existing nail holding requirements may not justify certain wind load conditions. Therefore, a test program to characterize the nail holding properties of current production was conducted by two testing agencies. Based on those test results, some requirements for nail holding performance of sheathing were increased.

All public comments will be reviewed and considered. The Standing Committee for PS 2 and NIST will revise the standard accordingly.

Dated: February 7, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–3118 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 110131074–1069–02]

RIN 0648–XZ69

Endangered and Threatened Wildlife; 90-Day Finding on a Petition to List the Texas Pipefish as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list the Texas pipefish (*Syngnathus affinis*) as threatened or endangered under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petition and related materials are available upon request from the Assistant Regional Administrator, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or online from the NMFS SERO Web site: *http://sero.nmfs.noaa.gov/pr/ListingPetitions.htm*

FOR FURTHER INFORMATION CONTACT: Calusa Horn, NMFS Southeast Region, 727–824–5312, or Lisa Manning, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2010, we received a petition from the WildEarth Guardians to list Texas pipefish (*Syngnathus affinis*) as threatened or endangered under the ESA. Copies of this petition are available from us (*see* **ADDRESSES,** above).

In 2007, WildEarth Guardians (then known as the Forest Guardians) petitioned the U.S. Fish and Wildlife Service (USFWS) to list 475 species in the Southwestern United States as threatened or endangered under the ESA, including the Texas pipefish (*Syngnathus affinis*). The request was to list all full species in USFWS' Southwest Region ranked as "critically imperiled" (G1) or "critically imperiled/imperiled" (G1G2) by the organization NatureServe. On January 6, 2009, the USFWS published a negative 90-day finding for the Texas pipefish and 269 other species included within the petition (74 FR 419). (The Texas pipefish is a marine fish that primarily uses seagrass habitat within shallow, coastal areas. Marine fishes typically fall under NMFS jurisdiction pursuant to section 4(2) of the ESA, the Reorganization Plan No. 4 of 1970 and a 1973 memorandum of understanding between the USFWS and the NMFS.) The USFWS determined that the information presented by the petitioner on the Texas pipefish contained only "basic information on the range of the species, based on some level of survey effort. Habitat was frequently mentioned as well as other aspects of the species' biology, such as food habitats. Population size or abundance, if addressed, was rarely quantified, and the database instead used descriptors such as large, small, or numerous. The available information we [USFWS] reviewed did not address specific threats to the species" (74 FR 419). With respect to application of the listing factors in ESA section 4(a)(1) to the Texas pipefish, USFWS concluded: no information was presented on threats to the species or their habitats regarding the first three factors; the petitioner's claim that more protection could be afforded to the species if it was listed under the ESA did not establish inadequate regulatory mechanisms; and assertions of limited distribution and small population size alone did not establish a natural or manmade factor affecting the species' continued existence. The USFWS concluded that the petition did not present substantial scientific or commercial information to indicate that the petitioned action may be warranted for the Texas pipefish (74 FR 419; January 6, 2009).

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a "positive 90-day finding"), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a "species," which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA–USFWS policy clarifies the agencies' interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is

contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Court decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action "may be" warranted. As a general matter, these decisions hold that a petition need not establish a "strong likelihood" or a "high probability" that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioner's assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by other organizations or agencies, such as the International Union on the Conservation of Nature, the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or State statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA For example, as explained by NatureServe, their assessments of a species' conservation status do "not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act" because NatureServe assessments "have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide." (*http://www.natureserve.org/prodServices/statusAssessment.jsp*). Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Analysis of the Petition

The petition states that the Texas pipefish is imperiled, extremely rare, could be extinct, and that the primary threat contributing to the Texas pipefish's endangerment is habitat degradation. The petition cites the decline of seagrasses utilized by pipefish as a result of anthropogenic activities, such as dredging, prop scarring, coastal development, non-point source pollutants, nutrient loading, and oil spills, and states that these activities are contributing to the endangerment of the Texas pipefish. The petitioner also asserts that the species' biological constraints, such as small population size and reproductive traits increase its risk of extinction, and that the species is inadequately protected by regulatory mechanisms from the threats it faces. In summary, the petition argues that at least three of the five causal factors in section 4(a)(1) of the ESA are negatively impacting the continued existence of the Texas pipefish: present or threatened destruction, modification, or curtailment of its habitat or range; inadequacy of existing regulatory mechanisms; and other natural or manmade factors, particularly the biological constraints of the species' life history.

We evaluated whether the petition presented the information required for a positive finding under 50 CFR 424.14(b)(2). The petition does not include any information on population size, past or present, or information on the status of the species, over all or a significant portion of its range and none of this information is available in our files. The petition provided some information on the historical geographic occurrences of the existing nominal museum specimens. The petition clearly indicates the administrative measure recommended and gives the scientific and common name of the species involved; contains a narrative justification for the recommended measure, describing the distribution of

the species, as well as the threats faced by the species; and is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps. However, we believe that the information in the petition indicates that *Syngnathus affinis* is not a species eligible for listing under the ESA, as we discuss in detail below.

Status of Syngnathus affinis

Under the ESA, a listing determination may address a "species," which is defined to also include subspecies and, for any vertebrate species, any DPS that interbreeds when mature (16 U.S.C. 1532(16)). Historically the Texas pipefish has been considered a distinct species (*Syngnathus affinis)* or a subspecies of the Northern pipefish (*Syngnathus fuscus);* however the petition does not support a "may be warranted" finding because the best available scientific information indicates that specimens previously identified as the "Texas pipefish" are actually all phenotypic variants of the common Gulf pipefish.

The petition notes that a recent scientific publication questioned whether the Texas pipefish (*Syngnathus affinis*) is distinct from the Gulf pipefish (*Syngnathus scovelli*) (Tolan 2008). Tolan (2008) explains that prior to his study, *S. affinis* was only known from a small number of museum specimens, that no new collection of any specimen purported to be the Texas pipefish had been recorded in over 30 years, and that "considerable confusion" surrounds the taxonomic status of the entity. The nominal species was based on a single specimen bought at a London auction, and recorded as originating from Louisiana. Early discussion of "short-snouted" pipefishes from the western Gulf of Mexico included two species, *Syngnathus fuscus* and *S. scovelli,* differentiated by total number of trunk rings and dorsal fin rays. A subspecies designation of *S. fuscus affinis* was adopted by authors of two separate studies in 1965 and 1977. The subspecies designation was first dropped in 1982 in a study distinguishing *S. affinis* and *S. fuscus* in the Gulf of Mexico. Other authors subsequently combined all specimens of short-snouted pipefishes in the Gulf of Mexico as *S. affinis,* eliminating this region from the range of *S. fuscus.*

In his study, Tolan (2008) located new museum specimens of the Texas pipefish that "call into question the limited distribution range of *S. affinis,* with this 'species' now recorded from around the northern Gulf of Mexico," which is a range "fully encompassed by the known range of *S. scovelli* (Dawson 1982)." Tolan (2008) conducted an analysis of similarity (ANOSIM), comparing meristic (number of trunk rings, tail rings, total rings, subdorsal trunk rings, subdorsal tail rings, total subdorsal rings, and dorsal fin ray counts) and morphometric characteristics (standard length, head length, snout length, snout depth, snout depth-to-length, trunk depth, anal depth, pectoral depth, and dorsal base length) of all known specimens nominally identified as *Syngnathus affinis* to specimens of *Syngnathus scovelli* that the author collected for the study from areas where *S. affinis* had previously been recorded as collected. The results revealed "a low degree of separation" between meristic characters of the two species. The analysis detected differences in mean values for meristic characteristics but found there was a high degree of overlap in the ranges of the counts. The ANOSIM performed by Tolan (2008) failed to detect "any consistent pattern of differences" between the two groups based on morphometric characters. Based on the "plasticity of meristic characters within western Atlantic species of Sygnathus," Tolan suggests that the specimens examined in his study "represent different phenotypes of *S. scovelli*", and that specimens identified as *S. affinis* "most likely represent individuals at the upper limits of these features." Tolan concluded, "Based on the multivariable techniques used for this study, there appears to be little justification for recognizing *S. affinis* and *S. scovelli* as distinct species, as the former is shown herein to be indistinct from the latter."

The petition cited several classifications made for *S. affinis* by other organizations (American Fisheries Society, "endangered"; NatureServe, "critically imperiled"), but none of these examines the taxonomic uncertainty of *S. affinis* or provides scientific information to suggest it is a valid species, subspecies or DPS. Therefore, the only credible scientific information referenced in the petition suggests that *S. affinis* is not a valid "species" as defined by the ESA. The petition correctly cites Tolan (2008) as stating that before *S. affinis* is invalidated as a nominal taxon, "extensive field work must be conducted in the western Gulf of Mexico to document that there is indeed only a single specimen of short-snouted *Syngnathus* within the area." Tolan suggests that such field work should be conducted over a longer timeframe than the 6 months devoted to his study, as a step in assigning the proper name to the taxon according to the Principles of Priority of the International Commission of Zoological Nomenclature (ICZN 2000). However, as has been noted in other listing determinations, NMFS is not required to ignore scientific information that contrasts with taxonomic nomenclature. Our regulations state that, "In determining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group" (50 CFR 424.11(a)). Under this provision, NMFS must apply the best available science even when it indicates that taxonomic classifications are outdated or wrong.

Petition Finding

After reviewing the information contained in the petition, we find that the best available information supports the conclusion that the Texas pipefish is not a "species" eligible for listing under the ESA. Over the past 30 years no specimens identified as *S. affinis* have been collected and the best scientific information presented in the petition indicates that the Texas pipefish and the Gulf pipefish are not separate species. Rather, the existing nominal museum specimens appear only to be misidentified phenotypes of the Gulf pipefish, based on the plasticity and high degree of overlap in identifying characteristics. After reviewing the information contained in the petition and in our files, we have concluded that the petition fails to present substantial scientific or commercial information indicating that the petitioned action may be warranted.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 8, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–3138 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA208

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Northeast Fisheries Science Center (NEFSC), in cooperation with the New England Fishery Management Council (Council) will convene a webinar for Council members and the public to review and consider recommendations from the NEFSC Science and Research Director and Northeast Regional Administrator regarding the allocation and prioritization of at-sea observer coverage for April 2011 through March 2012. A draft report was delivered to both the New England and Mid-Atlantic Fishery Management Councils in January, 2011 and is available online at *http://www.nefsc.noaa.gov/femad/fsb/SBRM/2011/2011-SBRM-Sea-Day-Analysis-Prioritization.pdf.*

DATES: The webinar will be held on Wednesday, March 2, 2011 from 9 a.m. to 11 a.m. (EST). The deadline for the submission of comments on the report is 5 p.m. on March 7, 2011.

ADDRESSES: The meeting will be conducted via webinar.

Addresses: Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543; New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Rago, Northeast Fisheries Science Center 508–495–2341 or Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: Information about connecting to the webinar will be posted on the NEFSC's SAW/SARC Web page, *http://www.nefsc.noaa.gov/nefsc/saw/* and on the Council's Web site, *http://www.nefmc.org,* under "What's New". Both Web sites also will provide links to several other SBRM reports.

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: February 8, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–3055 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA207

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee (Committee), in February 2011, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Monday, February 28, 2011 at 10 a.m.

ADDRESSES: The meeting will be held at the Courtyard by Marriott, 225 McClellan Highway, East Boston, MA 02128, telephone: (617) 569–5250; fax: (617) 561–0971.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Research Steering Committee will meet to discuss activities since its November 2010 meeting. In addition to a brief update from NOAA/NMFS Cooperative Research Program, the committee may discuss its future meeting schedule, event planning, research priorities and final cooperative research report reviews. A more detailed agenda will be published prior to the meeting.

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: February 8, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–3054 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK54

Marine Mammals; File No. 13602

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Long Marine Lab, Institute of Marine Sciences, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, CA has been issued a major amendment to Permit No. 13602.

ADDRESSES: The permit amendment and related documents are available for review 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;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Room 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On May 20, 2010, notice was published in the **Federal Register** (75 FR 28236) that a request for an amendment Permit No. 13602 to conduct research on captive and rehabilitating threatened and endangered marine mammals had been submitted by the above-named applicant. On December 8, 2010, notice was published in the **Federal Register** (75 FR 76399) that changes to the application were requested.

The requested permit amendment has been issued 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 (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit holder is authorized to conduct physiological research on captive Hawaiian monk seals (*Monachus schauinslandi*) in facilities in the United States, and opportunistic energetic assessments on stranded ESA-listed marine mammals under NMFS jurisdiction undergoing rehabilitation in California, using methods currently approved in Permit No. 13602. In addition to the energetic assessments, the following research is authorized on captive Hawaiian monk seals: Deuterium oxide and Evan's blue administration, blood sampling, blubber ultrasound; and administration of thyroid stimulating hormone and fecal sampling. The amendment has been issued for the duration of the permit.

An environmental assessment (EA) analyzing the effects of the permitted activities on the human environment was prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI).

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 3, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–2982 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA197

Marine Mammals; File No. 978–1791

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Paul E. Nachtigall, PhD, Marine Mammal Research Program Hawaii Institute of Marine Biology, P.O. Box 1106, Kailua, Hawaii 96734 has been issued a minor amendment to Scientific Research Permit No. 978–1791–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices: 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., Room 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The original permit, issued on February 9, 2006 (71 FR 8279) authorizes the permit holder to conduct hearing measurements on stranded whales and dolphins in the U.S. through February 28, 2011. The minor amendment (No. 978–1791–01) extends the duration of the permit through February 28, 2012, but does not: Change the manner in which animals may be taken, increase the number of animals authorized to be taken, or add new species or geographic locations.

Dated: February 7, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–3136 Filed 2–10–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO AREBLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 3/14/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments Contact: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agency listed:

Products

NSNs:

8465–00–NIB–0211—Pouch, Four 3-round magazines, M26 12-guage shotgun MASS, Camouflage

8465–00–NIB–0212—Pouch, Four 5-round magazines, M26 12-guage shotgun MASS, Camouflage

8465–00–NIB–0213—Soft carrying case, Shotgun, 3-round magazine, M26 12-guage shotgun MASS, Camouflage

8465–00–NIB–0214—Soft carrying case, Shotgun, 5-round magazine, M26 12-guage shotgun MASS, Camouflage

NPA: L.C. Industries for the Blind, Inc., Durham, NC

Contracting Activity: Army Contracting Command, Picatinny Arsenal, NJ

Coverage: C-List for 100% of the requirement of the Picatinny Arsenal as aggregated by the Department of the Army, Tank and Armament Command.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2011–3052 Filed 2–10–11; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0011]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on March 14, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830, or Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 28, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 3, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P04

SYSTEM NAME:

Reduction-In-Force Case Files (February 22, 1993, 58 FR 10227).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Personnel Services, Human Resources Directorate, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Civilian employees serviced by the Washington Headquarters Service, Human Resource Office who have been notified of a reduction-in-force action."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, home/mailing address, service computation date, veteran's preference for Reduction in Force (RIF), performance appraisal ratings, tenure, and subgroup. Documents in the files may include letters from management officials, letters prepared by personnel to the individual regarding type of action required, correspondence from individual concerned and other miscellaneous correspondence concerning the specific action."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 7103, Definitions, application; 10 U.S.C. 1597, Civilian positions: guidelines for reductions; 5 CFR 351, Chapter 1–Office of Personnel Management, Reductions in Force; and DoD 1400.25–M, chapter 1701, Department of Defense Civilian Personnel Manual."

PURPOSE(S):

Delete entry and replace with "To document the communication of the reduction-in-force process and communicate with affected employees."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Office of Personnel Management in instances where an affected employee appeals the decision.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Paper file folders."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are maintained in locked file cabinets in a secure area in a building with 24-hour security. Access to records is only by authorized Reduction in Force (RIF) team personnel."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief of Staffing Division, Personnel Services, Human Resources Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Staffing Division, Personnel Services, Human Resources Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155.

Inquiries must include the name of the individual, approximate date of reduction in force and be signed."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Requests must include the name and number of this System of Records Notice, the name of the individual, approximate date of reduction in force and be signed."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "The individual, the Official Personnel File (OPF), and correspondence from appeal examiner in appealed cases."

* * * * *

DWHS P04

SYSTEM NAME:

Reduction-In-Force Case Files.

SYSTEM LOCATION:

Personnel Services, Human Resources Directorate, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees serviced by the Washington Headquarters Service, Human Resource Office who have been notified of a reduction-in-force action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home/mailing address, service computation date, veteran's preference for Reduction in Force (RIF), performance appraisal ratings, tenure, and subgroup. Documents in the files may include letters from management officials, letters prepared by personnel to the individual regarding type of action required, correspondence from individual concerned and other miscellaneous correspondence concerning the specific action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7103, Definitions, application; 10 U.S.C. 1597, Civilian positions: Guidelines for reductions; 5 CFR 351, Chapter 1–Office of Personnel Management, Reductions in Force; and DoD 1400.25–M, chapter 1701, Department of Defense Civilian Personnel Manual.

PURPOSE(S):

To document the communication of the reduction-in-force process and communicate with affected employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Office of Personnel Management in instances where an affected employee appeals the decision.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper file folders.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Records are maintained in locked file cabinets in a secure area in a building with 24-hour security. Access to records is only by authorized Reduction in Force (RIF) team personnel.

RETENTION AND DISPOSAL:

Records are destroyed two years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Staffing Division, Personnel Services, Human Resources Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Staffing Division, Personnel Services, Human Resources Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155.

Inquiries must include the name of the individual, approximate date of reduction in force and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Requests must include the name and number of this System of Records Notice, the name of the individual, approximate date of reduction in force and be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual, the Official Personnel File (OPF), and correspondence from appeal examiner in appealed cases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–3092 Filed 2–10–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 12, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. 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 Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 7, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title of Collection: Baccalaureate and Beyond Longitudinal Study 2008/12 (B&B:08/12) Field Test 2011.

OMB Control Number: 1850–0729.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 3,782.

Total Estimated Number of Annual Burden Hours: 805.

Abstract: This request for OMB approval is to conduct a second follow-up field test for the Baccalaureate and Beyond Longitudinal Study of 2008/2012 (B&B:08/12), from June through October 2011. The primary purpose of the B&B series of studies is to describe the various paths of recent college graduates into employment and additional education. Baseline data for the B&B:08 cohort were collected as part of the National Postsecondary Student Aid Study (NPSAS:08). The first follow-up interview (B&B:08/09) collected information from respondents one year after they received their bachelor's degree; the second follow-up (B&B:08/12) will collect data four years after bachelor's degree receipt. Interview data will be supplemented with a variety of administrative data sources, including the Central Processing System, the National Student Loan Data System, and the National Student Clearinghouse. This request also requests a waiver of the 60-day **Federal Register** notice for the full-scale data collection package. Full-scale data collection will take place from July 2012 through March 2013.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4416. 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 *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. 2011–3128 Filed 2–10–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education (ED).

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 15, 2011. It is encouraged that all comments are sent by March 11, 2011. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 12, 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.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the

information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 8, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of the Deputy Secretary

Type of Review: New.

Title: Race to the Top Program Review Protocols.

OMB #: Pending.

Frequency: Monthly; Semi-Annually.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Reporting and Recordkeeping Hour Burden:

Responses: 48.

Burden Hours: 74.

Abstract: The ARRA provides $4.3 billion for the Race to the Top Fund (referred to in the statute as the State Incentive Grant Fund). This is a competitive grant program. The purpose of the program is to encourage and reward States that are creating the conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and implementing ambitious plans in four core education reform areas: (a) Adopting internationally-benchmarked standards and assessments that prepare students for success in college and the workplace; (b) building data systems that measure student success and inform teachers and principals in how they can improve their practices; (c) increasing teacher effectiveness and achieving equity in teacher distribution; and (d) turning around our lowest-achieving schools.

The U.S. Department of Education (the Department) will collect this data from the 12 Race to the Top grantee states to inform its review of grantee implementation, outcomes, oversight, and accountability. The Department will use these forms to inform on-site visits, "stocktake" meetings with Implementation and Support Unit leadership at the Department, and annual reports for individual grantees and the grant program as a whole.

In order to allow for the program review of the Race to the Top grantees to occur in a timely manner, we are committed to expediting the program review for Race to the Top, necessitating emergency clearance of the protocols.

Additional Information: As work on the protocols evolved, the Department concluded that it was more efficient and effective to have a few common questions that would apply to all of the grantees. Due to this unanticipated result of the protocol development, the Department is requesting that the Office of Management and Budget (OMB) clear the monitoring protocol on an emergency basis. This is the first year of implementation of a $4 billion dollar program, the largest discretionary grant program ever administered by the Department. As a result, the program continues to generate high public interest both for the Department and the Administration. Delays in finalizing this collection would also impede our ability to use this data to inform our technical assistance efforts in the first year of program implementation when support is critical. Additionally, as it is our intention to use much of the data gathered through this monitoring protocol to inform the on-site monitoring process, delay of clearance of this document will also hinder our on-site monitoring process.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4513. 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 when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* 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. 2011–3131 Filed 2–10–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

[OE Docket No. PP–371]

Notice of Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings, and Notice of Floodplains and Wetlands Involvement; Northern Pass Transmission LLC

AGENCY: Department of Energy (DOE).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Conduct Public Scoping Meetings; Notice of Floodplains and Wetlands Involvement.

SUMMARY: The Department of Energy (DOE) announces its intention to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969 to assess the potential environmental impacts from its proposed Federal action of granting a Presidential permit to Northern Pass Transmission LLC (Northern Pass or Applicant) to construct, operate, maintain, and connect a new electric transmission line across the U.S.-Canada border in northern New Hampshire (NH). The EIS, *Northern Pass Transmission Line Project Environmental Impact Statement* (DOE/EIS–0463), will address potential environmental impacts from the proposed action and the range of reasonable alternatives. The U.S. Forest Service, White Mountain National Forest, and the Army Corps of Engineers, New England District, are cooperating agencies.

The EIS will provide the analysis to support a Forest Service decision on

whether to issue a special use permit within the White Mountain National Forest. The Responsible Official for the Forest Service decision is the Forest Supervisor for the White Mountain National Forest.

The purpose of this Notice of Intent (NOI) is to inform the public about the proposed action, announce plans to conduct public scoping meetings in the vicinity of the proposed transmission line, and solicit public comments for consideration in establishing the scope of the EIS. Because the proposed project may involve actions in floodplains and wetlands, the draft EIS will include a floodplain and wetland assessment as appropriate, and the final EIS or Record of Decision will include a floodplain statement of findings.

DATES: The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until April 12, 2011. Written and oral comments will be given equal weight, and DOE will consider all comments e-mailed or postmarked by April 12, 2011 in defining the scope of this EIS. Comments e-mailed or postmarked after the close of the comment period will be considered to the extent practicable.

Locations, dates, and start and end times for the public scoping meetings are listed in the **SUPPLEMENTARY INFORMATION** section of this NOI.

Requests to speak at one or more public scoping meeting(s) should be received at the address indicated below by March 11, 2011; requests received by that date will be given priority in the speaking order. However, requests to speak also may be made at the scoping meetings.

ADDRESSES: Requests to speak at a public scoping meeting, comments on the scope of the EIS, and requests to be added to the document mailing list should be addressed to: Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; by electronic mail to *Brian.Mills@hq.doe.gov*; or by facsimile to 202–586–8008. For general information on the DOE NEPA process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; by electronic mail at *askNEPA@hq.doe.gov*; or by facsimile at 202–586–7031.

FOR FURTHER INFORMATION CONTACT: For information on DOE's proposed action, contact Brian Mills by one of the methods listed in **ADDRESSES** above, or at 202–586–8267. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom by one of the methods listed in **ADDRESSES** above, or at 202–586–4600, or 800–472–2756. For information on the Forest Service role as a cooperating agency, contact Tiffany Benna by electronic mail at *tbenna@fs.fed.us;* by phone at 603–536–6241; by facsimile at 603–536–3685; or by mail at 71 White Mountain Drive, Campton, NH 03223. For information on the Army Corps of Engineers permit process, contact Erika Mark at 978–318–8250; by electronic mail at *Erika.L.Mark@usace.army.mil*; or by mail at 696 Virginia Road, Concord, MA 01742.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 10485, as amended by E.O. 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, operated, maintained, or connected at the U.S. international border. E.O. 10485 provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest and after favorable recommendations from the U.S. Departments of State and Defense. In determining consistency with the public interest, DOE considers the potential environmental impacts of the proposed project under NEPA, determines the project's impact on electric reliability (including whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions), and considers any other factors that DOE may find relevant to the public interest. The regulations implementing E.O. 10485 have been codified at 10 CFR 205.320–205.329. DOE's issuance of a Presidential permit indicates that there is no Federal objection to the project, but does not mandate that the project be undertaken.

On October 14, 2010, Northern Pass applied to DOE pursuant to E.O. 10485, for a Presidential permit to construct, operate, maintain, and connect a high-voltage direct current (HVDC) transmission line across the U.S.-Canada border. The proposed HVDC transmission line would be capable of transmitting up to 1,200 megawatts (MW) of power in either direction, *i.e.,* Canada to the U.S. and U.S. to Canada. The northern HVDC converter terminal is proposed to be constructed at the Des Cantons Substation in Québec, Canada, and would be connected to an HVDC line that would run southward in Québec for approximately 45 miles where it would cross the U.S.-Canada border into New Hampshire. The line would extend south from the international border approximately 140 miles to an HVDC converter terminal that would be constructed in the city of Franklin, NH. The terminal would convert the direct current to alternating current (AC) and allow the HVDC line to connect to a new approximately 40-mile AC line that Northern Pass proposes to construct between the Franklin converter station and the existing Deerfield Substation in the town of Deerfield, NH.

For the portion of the Project from the U.S.-Canada border to Franklin, NH, Northern Pass proposes to construct a single circuit ±300-kV HVDC above-ground transmission line mounted on structures ranging from approximately 90 feet to 135 feet tall. For the AC portion of the Project from Franklin to Deerfield, NH, Northern Pass proposes to construct a single circuit 345-kV AC above-ground transmission line mounted on structures ranging from approximately 80 feet to 135 feet tall.

After due consideration of the nature and extent of the proposed project, including evaluation of the "Information Regarding Potential Environmental Impacts" section of the Presidential permit application, DOE has determined that the appropriate level of NEPA review for this project is an EIS. DOE's proposed action is the granting of the Presidential permit for a transmission line to cross the international border. It is anticipated that the transmission line project could significantly affect the quality of the human environment.

Notice of Floodplain and Wetland Involvement: Because the proposed project may involve actions in floodplains and wetlands, in accordance with 10 CFR part 1022, *Compliance with Floodplain and Wetland Environmental Review Requirements,* as part of the analysis of impacts DOE will conduct field delineation of floodplains and wetlands along the preferred route and alternatives, using State and Federal protocols and consulting Federal Emergency Management Agency Flood Insurance Rate Maps. The EIS will include a floodplain and wetland assessment as appropriate, and the final EIS or record of decision will include a floodplain statement of findings.

The Forest Service proposed action is the issuance of a special use permit to Northern Pass to construct, operate, and maintain a new electric transmission line in the White Mountain National Forest. The EIS will identify any restrictions necessary to ensure the project is consistent with applicable Forest Plan.

Where the activity involves the discharge of dredged or fill material into

waters of the United States, a permit from the Army Corps of Engineers is required pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Army Corps of Engineers regulations provide for concurrent decision making with States, and combining insofar as possible process and procedures, including public involvement procedures, leading to a permit decision. The Army Corps of Engineers General Regulatory Policies can be found at 33 CFR part 320.

DOE invites Tribal governments and Federal, State, and local agencies with jurisdiction by law or special expertise with respect to environmental issues to be cooperating agencies with respect to the EIS, as defined at 40 CFR part 1501.6. Cooperating agencies have certain responsibilities to support the NEPA process, as specified at 40 CFR part 1501.6(b). The Forest Service, White Mountain National Forest, and the Army Corps of Engineers, New England District, are cooperating agencies.

Northern Pass describes its preferred route for the Project in terms of three sections, the north, central and south section.

The north section would begin in NH at the U.S.-Canada border and run in a generally southerly direction through the town of Colebrook, to the Lost Nation Substation located in the vicinity of the town of Northumberland; it would require a new right-of-way (ROW). South of Lost Nation Substation, the line would utilize an existing ROW through the towns of Northumberland, Lancaster, and Whitefield to a point east of the town of Littleton and west of the town of Bethlehem.

The central section would run south from that point utilizing an existing ROW through the town of Sugar Hill and cross the White Mountain National Forest between the towns of Easton and North Woodstock. The line would cross the Appalachian Trail in the White Mountain National Forest utilizing an existing ROW. The line would continue south utilizing an existing ROW through the town of Thornton to the city of Franklin, where the southern converter terminal would be located.

The south section of the line would run southeast from the Franklin converter terminal to the Deerfield substation utilizing an existing ROW except near the city of Concord, where the line would run east of the city of Concord and require a new ROW for approximately 8 miles before returning to the existing ROW in the town of Pembroke, then utilizing this existing ROW to the Deerfield substation.

Northern Pass has identified several segment options to its preferred route. These segment options occur in the north, central and south sections of the proposed transmission line.

North Section Segment Options

Three optional segments have been identified for the north section. The first is 0.5 miles longer than the preferred route and is located east of the preferred route primarily near the town of Stratford. This segment option is approximately 10.2 miles long and deviates to the east around several mountains to limit its visibility from the Connecticut River Scenic Byway. This route would cross part of the Bunnell Working Forest, a protected conservation area.

The second segment option for the north section is approximately 8.6 miles long (1 mile longer than the preferred route). It would bypass the Cape Horn State Forest to the west and traverse the towns of Northumberland and Lancaster. This option would require a new ROW, would be more visible from the Connecticut River Scenic Byway, and would traverse the Potter Farm, a privately-owned conservation area.

The third segment option for the north section is approximately 21.1 miles long (1.8 miles longer than the preferred route) and would bypass the community of Whitefield, as well as an historic site and some conservation lands. This route would require a new ROW over the entire 21.1 mile length and be more visible from, and cross, the Connecticut River Scenic Byway.

Central Section Segment Options

Two segment options have been identified in the central section. The first winds around the White Mountain National Forest and is approximately 53 miles long. It is 13.3 miles longer than the preferred route, and it would require a new ROW. This route would cross the Appalachian Trail at a location that does not currently contain a transmission line crossing.

The second alternative segment in the central section leaves the existing ROW just north of Webster Lake and goes around the west side of the lake for 5.3 miles on a new ROW before rejoining the existing ROW south of the Webster Substation. This alternative is 0.1 mile longer than the preferred route and would be visible to residents around Webster Lake.

South Section Segment Options

Three segment options have been identified in the south section. The first segment option would leave the existing ROW north of Oak Hill Substation and require 5.2 miles of new ROW. This route is 0.5 mile shorter than the preferred route.

The second segment option in the south section would leave the existing ROW north of Oak Hill Substation and run in an easterly direction on 18.6 miles of new ROW until it connects to an existing distribution line ROW which would require expansion to transmission line ROW standards for approximately 9.7 miles. This route is 1.7 miles longer than the preferred route.

The third segment option in the south section would utilize the existing ROW for approximately 7.7 miles in the City of Concord and the Town of Pembroke, NH. It would require Federal Aviation Administration authorization for the location of the new transmission structures in the vicinity of Concord Municipal Airport.

The Northern Pass Presidential permit application, including associated maps and drawings, can be viewed or downloaded in its entirety from the project EIS Web site at *http://www.northernpasseis.us.* Also available at these same locations is the November 16, 2010, **Federal Register** Notice of Receipt of Application (75 FR 69990).

Agency Purpose and Need and Alternatives

The purpose and need for DOE's action is to decide whether to grant Northern Pass the subject Presidential permit.

Under the Action alternative, DOE would grant the Northern Pass application for a Presidential Permit for the proposed international electric transmission line.

Under the No Action alternative, DOE would deny the Northern Pass application for a Presidential Permit for the proposed international electric transmission line.

Identification of Environmental Issues

The EIS will evaluate potential environmental, social, cultural, and economic impacts in the U.S. from the construction and operation of the proposed new electric transmission line facilities. This notice is intended to inform agencies and the public of the proposed project, and to solicit comments and suggestions for consideration in the preparation of the EIS.

DOE intends to analyze impacts across a number of resource areas, including:

- Air quality (including climate change and greenhouse gas emissions).
- Water resources and drainage.
- Geography, geology, and soils.

- Land use.
- Threatened and endangered species, special status species, and related sensitive resources.
- Airspace utilization.
- Public health and safety.
- Noise.
- Natural hazards.
- Hazardous materials.
- Accidents and intentional destructive acts.
- Cultural and historical resources.
- Recreational resources.
- Visual resources.
- Socioeconomic impacts, community services and infrastructure.
- Environmental justice considerations (disproportionately high and adverse impacts to minority and low income populations).
- Cumulative impacts (past, present, and reasonably foreseeable future actions).
- Irreversible and irretrievable commitments of resources.

This list is not intended to be all inclusive or to imply any predetermination of impacts. DOE invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

Scoping Process

Interested parties are invited to participate in the scoping process, both to help define the environmental issues to be analyzed and to identify the range of reasonable alternatives. Both oral and written comments will be considered and given equal weight by DOE, regardless of how submitted. Written comments can be submitted either electronically or by paper copy; if the latter, consider using a delivery service because materials submitted by regular mail are subject to security screening, which both causes extended delay and potential damage to the contents. (Warped and unusable CD or DVD discs are common.) Additionally, comments can be submitted through the project Web site established for preparation of the EIS, at *http://www.northernpasseis.us.* This site will also serve as a repository for all public documents and the central location for announcements. Individuals may subscribe to the "mail list" feature on the project Web site in order to receive future announcements and news releases.

Public scoping meetings will be held at the locations, dates, and times as indicated below:

1. Pembroke NH, Pembroke Academy cafeteria, 209 Academy Road, Monday, March 14, 6–9 p.m.;

2. Franklin NH, Franklin Opera House, 316 Central street, Tuesday, March 15, 6–9 p.m.;

3. Lincoln NH, The Mountain Club on Loon, Hancock Room, 90 Loon Mountain Road, Wednesday, March 16, 6–9 p.m.;

4. Whitefield NH, Mountain View Grand Hotel and Resort, Presidential Room, 101 Mountain View Road, Thursday, March 17, 6–9 p.m.; and

5. Colebrook NH, Colebrook Elementary School, 27 Dumont Street, Saturday, March 19, 1–4 p.m.

The scoping meetings will be structured in two parts: first, an informal discussion "workshop" period that will not be recorded; and second, a formal commenting session, which will be transcribed by a court stenographer. The meetings will provide interested parties the opportunity to view proposed project exhibits and make comments. The Applicant, DOE, and any cooperating agency representatives will be available to answer questions and provide additional information to attendees to the extent that additional information is available at this early stage of the proceedings.

Persons submitting comments during the scoping process, whether orally or in writing, will receive either paper or electronic copies of the Draft EIS, according to their preference. Persons who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the document for review and comment when it is issued should notify Brian Mills, as provided above, with their paper-or-electronic preference.

DOE will summarize all comments received in a "Scoping Report" that will be available on the project Web site and distributed either electronically to all parties of record for whom we have an e-mail address, or by mailing paper copies upon request.

EIS Preparation and Schedule

Following completion of the Scoping Report, DOE will prepare the Draft EIS, taking into consideration comments received during the scoping period.

DOE plans to issue the draft EIS by the end of November 2011. After DOE issues the draft EIS, the U.S. Environmental Protection Agency (EPA) will publish a notice of availability (NOA) of the draft EIS in the **Federal Register**, which will begin a minimum 45-day public comment period. DOE will announce how to comment on the draft EIS and will hold public hearings during the public comment period, but no sooner than 15 days after the notice of availability is published. In preparing the final EIS, DOE will respond to comments received on the draft EIS.

DOE plans to issue the final EIS by April 2012. No sooner than 30 days after the EPA publishes a NOA of the final EIS, DOE will issue its Record of Decision regarding its action considered in the EIS.

Dated: Issued in Washington, DC, on February 2, 2011.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–3147 Filed 2–10–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2183–080]

Grand River Dam Authority; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No:* 2183–080.

c. *Date Filed:* December 15, 2010.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Markham Ferry Project.

f. *Location:* The project is located on the Grand River (also known as the Neosho River) in Mayes County, Oklahoma.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Gretchen Zumwalt-Smith, General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 73401–0409. Tel: (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 502–6190 or *vedula.sarma@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 11, 2011.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/efiling.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system (*http://www.ferc.gov/docs-filing/ecomment.asp)* and must include name and contact information

at the end of comments. The Commission strongly encourages electronic filings.

All documents (original and seven copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2183–080) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* In its amendment application, the licensee proposes to rehabilitate the project's four generating units by refurbishing the turbine runners and replacing the generator frame, stator core and windings. Each of the project's turbine capacity would be increased by 7,500 hp from 35000 hp to 42,500 hp, and each of the generators installed capacity would increase by 5,000 kW from 27,000 kW to 32,000 kW. The total maximum hydraulic capacity of the project would increase approximately 13% from 28,000 cfs to 31,590 cfs, and the project's installed capacity would increase from 108,000 kW to 128,000 kW.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site using the "eLibrary" link at *http://elibrary.ferc.gov/idmws/search/fercgensearch.asp.* Enter the docket number excluding the last three digits (P–2183) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3165 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI10–20–000]

Evans Solutions, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI10–20–000.

c. *Date Filed:* September 21, 2010.

d. *Applicant:* Evans Solutions, LLC.

e. *Name of Project:* Pressure Pumped Storage Hydroelectric Project.

f. *Location:* The proposed Pressure Pumped Storage Hydroelectric Project will be located on Ben-Pollard Lake, in Sumter, in Sumter County, South Carolina.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Reginald Evans, Evans Solutions, LLC, P.O. Box 1303, Sumter, SC 29150; telephone: (803) 458–1537; e-mail: *http://www.reggevans@yahoo.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* March 16, 2011.

All documents should be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* Please include the docket number (DI10–20–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Pressure Pumped Storage Hydroelectric Project will consist of: (1) An existing 20-acre man-made lake; (2) a powerhouse containing two 5–MW turbines and twelve 5–MW generators; (3) a water pipe tailrace, discharging water back into the lake; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly

modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may 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. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3161 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP11–67–000; PF10–21–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on January 25, 2011, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in the above referenced docket an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA) for its proposed TEAM 2012 Project. Specifically, Texas Eastern requests: (i) Authorization under NGA sections 7(b) and 7(c) to construct, own, operate, and maintain certain pipeline and compression facilities and related appurtenances and to abandon in place certain compression facilities necessary to increase capacity on the Texas Eastern system by approximately 190,000 dekatherms per day (Dth/d) from supply points in Clarington, Ohio and the Appalachian area to proposed interconnections in central and eastern Pennsylvania; (ii) authority to charge initial incremental recourse rates for firm service on the TEAM 2012 Project facilities and existing system rates for interruptible service on such facilities; and (iii) any waivers, authority, and further relief as may be necessary to implement the proposal contained in its application. Texas Eastern estimates its TEAM 2012 project to cost $204,471,000, all as more fully set forth in the application. This filing 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Texas Eastern requests that the Commission grant the requested authorizations and related approvals on or before October 31, 2011 to ensure that the TEAM 2012 Project is on-line by November 1, 2012, in time to meet the service needs of the TEAM 2012 shippers and to ensure that additional capacity is available at the earliest possible time to facilitate the transportation of new supplies, including Rocky Mountain supplies and supplies from the emerging Marcellus shale play.

Any questions regarding this Application should be directed to Berk Donaldson, Director, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, by phone: (713) 627–4488 or by fax: (713) 627–5947.

On June 28, 2010, the Commission staff granted Texas Eastern's request to utilize the National Environmental Policy Act (NEPA) Pre-Filling Process and assigned Docket Number PF10–21–000 to staff activities involving the TEAM 2012 Project. Now, as of the filing Texas Eastern's application on January 25, 2011, the NEPA Pre-Filling Process for this project has ended. From this time forward, Texas Eastern's proceeding will be conducted in Docket No. CP11–67–000, as noted in the caption of this Notice.

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.

Comment Date: February 28, 2011.

Dated: February 07, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3160 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI11–2–000]

Goshen Powerhouse, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI11–2–000.

c. *Date Filed:* January 20, 2011.

d. *Applicant:* Goshen Powerhouse, LLC.

e. *Name of Project:* Goshen Powerhouse Hydroelectric Project.

f. *Location:* The proposed Goshen Powerhouse Hydroelectric Project will be located on the Millrace Canal, Elkhart River in Goshen, Elkhart County, Indiana.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Timothy P. Braun, Registered Agent, Goshen Powerhouse, LLC, 118 East Washington Street, Suite 2, Goshen, IN 46528; Telephone: (574) 537–7300; Fax: (574) 537–7305; e-mail: *http://www.tim.braun@lucidenergy.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov* .

j. *Deadline for filing comments, protests, and motions:* March 4, 2011.

All documents should be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* Please include the docket number (DI11–2–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Goshen Powerhouse Hydroelectric Project will consist of: (1) An existing mill pond with approximately 3,100-acre-feet of storage; (2) an existing 12.5 foot high concrete dam with a 200-foot-long ogee spillway; (3) an existing 2-mile-long, 4-to-6-foot-deep, 50-to-200-foot-wide headrace canal; (4) an existing 25-foot-long, 49-foot wide powerhouse, containing a prototype system in which an in-conduit power generating system in a 48-inch steel pipe will be rated at 50-kW, while a second in-conduit power generating system in a 36-inch steel pipe will be rated at 30-kW; (5) a 100-foot-long, 50-foot-wide tailrace discharging water back into the Elkhart River; and (6) appurtenant facilities. The power will be transmitted from the generators to a load base.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may 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. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, and/or Motions to Intervene—Anyone may submit comments, a protest, and a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211,

.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, and/or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3153 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13637–001]

Great River Hydropower, LLC; Notice of Scoping Meetings and Environmental Site Review and Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* Original Major License.

b. *Project No.:* P–13637–001.

c. *Date filed:* July 12, 2010.

d. *Applicant:* Great River Hydropower, LLC.

e. *Name of Project:* Upper Mississippi River Lock & Dam No. 21 Hydroelectric Project.

f. *Location:* The proposed project would be located about 100 feet downstream of the U.S. Army Corps of Engineers' Lock and Dam No. 21 on the Mississippi River in Marion County, Missouri. The proposed project would occupy 5 acres of Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Arie DeWaal, Mead & Hunt Inc., 6501 Watts Road, Madison, WI 53719; Telephone (608) 273–6380.

i. *FERC Contact:* Janet Hutzel, Telephone (202) 502–8675, or by e-mail at *janet.hutzel@ferc.gov.*

j. *Deadline for filing scoping comments:* April 7, 2011.

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/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners 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 intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The proposed project would utilize the existing U.S. Army Corps of Engineers' Lock and Dam No. 21, and would consist of the following facilities: (1) A new 796-foot-long by 46-foot-wide by 25-foot-high concrete hydropower structure consisting of 30 turbine bays, located about 100 feet downstream of the existing dam; (2) 30 turbine-generator units having a total installed capacity of 15 megawatts; (3) two new 48-foot-long by 15-foot-wide by 45-foot-high concrete towers; (4) a new 40-foot-long by 30-foot-wide by 20-foot-high control building; (5) a new 120-foot-long by 120-foot-wide substation; (6) a new 1.5-mile-long access road; (7) a new 1.6-mile-long, 69-kilovolt transmission line; and (8) appurtenant facilities.

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 (P–13637) 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. Scoping Process.

The Commission intends to prepare an Environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental effects and reasonable alternatives to the proposed action.

Scoping Meetings

Commission staff will conduct one daytime scoping meeting, one evening meeting, and an Environmental Site Review. The daytime scoping meeting will focus on concerns of the resource agencies, non-governmental organizations, and Indian tribes, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings and the environmental site review, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings and the Environmental Site Review are as follows:

Daytime Scoping Meeting

Date and Time: Tuesday, March 8, 2011, 2 p.m. CST;

Location: City Council Chamber Room, Quincy City Hall, 720 Maine St., Quincy, IL 62301.

Evening Scoping Meeting

Date and Time: Tuesday, March 8, 2011, 6 p.m. CST;

Location: City Council Chamber Room, Quincy City Hall, 720 Maine St., Quincy, IL 62301.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing

list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (*see* item m above).

Environmental Site Review

Date and Time: Tuesday, March 8, 2011, 9:30 a.m. CST.

Location: The Corp's Lock and Dam No. 21 observation tower, which can be accessed from the south entrance to the Lock and Dam No. 21. The address is 909 W Lock and Dam Road, Quincy, Illinois. All participants are responsible for providing photo identification to enter the Corps' facility, and photography and video will be prohibited.

Phone number: All participants must contact John Neyens, Klingner & Associates, P.C., 616 N. 24th Street, Quincy, IL 62301, phone 217–223–3670, by February 25, 2011, to attend the Environmental Site Review.

Objectives

At the scoping meetings, the Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals; organizations; Indian Tribes; and Federal, State, and local agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist Commission staff in defining and clarifying the issues to be addressed in the EA.

Dated: February 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3152 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–20–000]

PJM Power Providers Group v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on February 1, 2011, pursuant to section 206 of the Federal Power Act, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, PJM Power Providers Group (Complainant) filed a formal complaint against PJM Interconnection, L.L.C. (Respondent), alleging that the tariffs governing the Respondent's Reliability Pricing Model are unjust and unreasonable and could be subject to manipulation.

The Complainants certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials and on parties and regulatory agencies the Respondent reasonably expects to be affected by this Complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 22, 2011.

Dated: February 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3154 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6467–000]

Rich, Brian R.; Notice of Filing

Take notice that on December 31, 2010, Brian R. Rich submitted for filing, an application for authority to hold interlocking positions, pursuant to part 45 of Title 18 of the Code of Federal Regulations, 18 CFR 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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: 5 p.m. Eastern Time on February 22, 2011.

Dated: February 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3164 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6466–000]

Ryan, Robert M.; Notice of Filing

Take notice that on December 31, 2010, Robert M. Ryan submitted for filing, an application for authority to hold interlocking positions, pursuant to part 45 of Title 18 of the Code of Federal Regulations, 18 CFR 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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: 5 p.m. Eastern Time on February 22, 2011.

Dated: February 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3163 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–3723–002]

Magill, David W.; Notice of Filing

Take notice that on February 4, 2011, David W. Magill submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act and Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR part 45 (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, 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 25, 2011.

Dated: February 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3162 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ11–11–000]

Big Rivers Electric Corporation; Notice of Filing

Take notice that on February 4, 2011, Big Rivers Electric Corporation (Big Rivers) filed a notice of cancellation of its Second Revised and Restated Open Access Transmission Tariff.

Big Rivers also requests waiver of the requirement of 18 CFR 35.15(a) by the Commission, to permit cancellation to become effective either as of December 1, 2010, the date that Big Rivers integrated its transmission facilities with the Midwest Independent System Transmission Operator, Inc., or as of February 4, 2011, the date of this filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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: 5 p.m. Eastern Time on February 25, 2011.

Dated: February 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3157 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13953–000]

Mahoning Hydropower, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 31, 2011.

On December 30, 2010, Mahoning Hydropower, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Lake Milton Hydroelectric Project (Lake Milton Project or project) to be located on the Mahoning River, in the town of Lake Milton, Mahoning County, Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A two-mile-long reservoir with a surface area of 1685 acres at a normal pool elevation of 948 mean sea level; (2) a 54-foot-high, 760-foot-long concrete gravity dam including a 650-foot-long spillway and four 60-inch-diameter gate valves; (3) a 35-foot-long, 25-foot-wide concrete powerhouse located at the base of the dam and over the existing Gate 2 discharge pipe containing one tubular S-Type propeller turbine-generator unit with a capacity of 650 kilowatts and placed inside the existing 70-foot-long, 60-inch-diameter cast iron conduit through the existing dam; (4) a new 12.5-kilovolt, 320-foot-long transmission line connecting the powerhouse to an existing distribution line; and (5) appurtenant facilities. The estimated annual generation of the Lake Milton Project would be 3,700 megawatt-hours at a head range of 26–40 feet.

Applicant Contact: Mr. Anthony J. Marra III, General Manager, 11365 Normandy Lane, Chagrin Falls, Ohio 44023; phone: (440) 804–6627.

FERC Contact: Sergiu Serban; phone: (202) 502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13953–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3049 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13952–000]

Claverack Creek, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 31, 2010, Claverack Creek, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Claverack Creek Hydroelectric Project to be located on Claverack Creek, in Columbia County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) The existing 16-foot-high, 170-foot-long Stottville Mill Dam; (2) an existing 11.4-acre impoundment with a normal water surface elevation of 106.0 feet mean sea level; (3) an existing turbine with a new generator and a new turbine-generator with a total capacity of 450 kilowatts; (4) an existing 10-foot-wide, 8-foot-deep intake canal; (5) new trash racks, head gates, and stop log structure; (6) an existing 6-foot-diameter, 10-foot-long penstock and a new 10-foot-long penstock extension; (7) a new 40-foot-wide, 60-foot-long powerhouse; (8) an existing 10-foot-wide, 20-foot-long tailrace; (9) a new approximately 200-foot-long, 13.2-kilovolt transmission line from the powerhouse to a nearby distribution line; (10) a redeveloped 100-foot-long access road; (11) and appurtenant facilities. The project would have an estimated annual generation of 2,182 megawatt-hours.

Applicant Contact: Mr. William D. B. Fay, Claverack Creek, LLC, 189 River Road, Ware, MA 01082; phone: (413) 244–6445.

FERC Contact: Timothy Looney; phone: (202) 502–6096.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and

competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13952–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3158 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at North American Electric Reliability Corporation (NERC) Meetings from January–June 2011

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following NERC related meetings:

- NERC Planning Committee Meetings and its sub-committee meetings on, but not limited to:
  - Wednesday–Thursday, February 9–10 Charlotte, NC (2)
  - Tuesday–Wednesday, March 8–9, Phoenix Convention Center—North Building, Phoenix, AZ (3)
  - Thursday, March 10 Teleconference (TBD)
  - Wednesday–Thursday, April 6–7 Las Vegas, NV (2)
  - Tuesday–Wednesday, June 7–8 Toronto, ON, Canada (2)
  - Tuesday–Thursday, June 28–30 Austin, TX (3)
- NERC Operating Committee Meetings and its sub-committee meetings on, but not limited to:
  - Tuesday–Wednesday, March 8–9, Phoenix Convention Center—North Building, Phoenix, AZ (2)
  - Tuesday–Wednesday, June 7–8 Toronto, ON, Canada (2)
- NERC Standards Committee Meetings and its sub-committee meetings on, but not limited to:
  - Friday, February 11 Teleconference (1)
  - Thursday, March 10 Teleconference (1)
  - Wednesday–Thursday, April 13–14 Salt Lake City, UT (2)
  - Thursday, May 12 Teleconference (1)
  - Thursday, June 9 Teleconference (1)
- NERC Member Representative Committee Meetings and its sub-committee meetings on, but not limited to:
  - Wednesday, February 16, Hyatt Regency Phoenix, Phoenix, AZ (1)
  - Tuesday, May 10 Arlington, VA (1)
- NERC Board of Trustees Meetings and its sub-committee meetings on, but not limited to:
  - Wednesday–Thursday, February 16–17, Hyatt Regency Phoenix, Phoenix, AZ (2)
  - Tuesday–Wednesday, May 10–11 Arlington, VA (2)
- NERC Finance and Audit Committee Meetings on, but not limited to:
  - Wednesday, February 9 Teleconference (1)
  - Tuesday, May 10, Washington, DC (1)
- Critical Infrastructure Protection Committee Quarterly Meetings and its sub-committee meetings on, but not limited to:
  - Wednesday–Thursday, March 9–10, Phoenix Convention Center—North Building, Phoenix, AZ (2)
  - Wednesday–Thursday, June 8–9 Phoenix, AZ (TBD)

The meetings will be held at the following locations:

1. North American Electric Reliability Corporation, 116–390 Village Boulevard, Princeton, NJ 08540, 609–452–8060.
2. Western Electricity Coordination Council, 155 North 400 West, Suite 200, Salt Lake City, UT 84103.
3. Electric Reliability Council of Texas (ERCOT)—ERCOT MET Center, 7620 Metro Center Drive, Austin, TX 78744.
4. Oncor Electric Delivery Building, 115 W. 7th St., Room 1025, Fort Worth, TX 76102.
5. The SERC Reliability Corporation, 2815 Coliseum Centre Drive, Suite 500, Charlotte, NC 28217.
6. NV Energy—Beltway Complex, 7155 Lindell Road, Las Vegas, NV 89118.
7. Toronto Airport Marriott, 901 Dixon Road, Toronto, ON, Canada.
8. Phoenix Convention Center—North Building, 100 North Street, Phoenix, AZ 85004.
9. Hyatt Regency Phoenix, 122 N Street, Phoenix, AZ 85004.
10. Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203.

Further information may be found at: *http://www.nerc.com.*

The above-referenced meetings are open to the public.

For more information, contact: Mary Agnes Nimis, Office of Electric Reliability, Federal Energy Regulatory Commission at (202) 502–8235 or *maryagnesnimis@ferc.gov* or Tim Friel, Office of Electric Reliability, Federal Energy Regulatory Commission at (202) 502–6447 or *tim.friel@ferc.gov.*

Dated: February 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3156 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission and Commission Staff Attendance at ISO/RTO Council and Regional State Committees Meeting

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following ISO/RTO Council and Regional State Committees meeting:

Saturday, February 12, 2011, 1 p.m.–4 p.m., Grand Ballroom Central, Renaissance Washington Hotel, 999 Ninth Street, NW., Washington DC 20001.

Further information may be found at *http://winter.narucmeetings.org/.*

The above-referenced meeting is open to the public.

The discussions at the meeting described above may address matters at issue in the following proceeding:

Docket No. AD10–5–000, *RTO/ISO Performance Metrics.*

For more information, contact Sandra Waldstein, Office of External Affairs,

Federal Energy Regulatory Commission at (202) 502–8092 or *sandra.waldstein@ferc.gov.*

Dated: February 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3155 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3705–004]

American Hydro Power Company; Notice of Termination of Exemption by Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of exemption by implied surrender.

b. *Project No.:* 3705–004.

c. *Date Initiated:* February 2, 2011.

d. *Exemptee:* American Hydro Power Company.

e. *Name and Location of Project:* The Gilpin Falls Project is located on Northeast Creek in Cecil County, Maryland.

f. *Filed Pursuant to:* 18 CFR 4.106.

g. *Exemptee Contact Information:* Mr. Richard J. Halloran, American Hydro Power Company, 771 E. Lancaster Ave., Suite 101, Villanova, PA 19085.

h. *FERC Contact:* Henry Woo, (202) 502–8872, or *henry.woo@ferc.gov.*

i. Deadline for filing comments, protests, and motions to intervene is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be sent to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–3705–004) on any documents or motions filed.

j. *Description of Existing Facilities:* The inoperative project consists of the following existing facilities: (1) Concrete-masonry dam with an overall length of 161 feet and a maximum height of 6 feet; (2) a 30-foot-long intake structure; (3) a 36-inch-diameter, 1300-foot-long penstock; and (4) a powerhouse containing three units with a total capacity of 396 kilowatts.

k. *Description of Proceeding:* The exemptee is currently in violation of Standard Article 1 of its exemption granted on May 11, 1982 (19 FERC ¶ 62,223). Section 4.106 of the Commission's regulations, 18 CFR 4.106, provides, among other things, that the Commission reserves the right to revoke an exemption if any term or condition of the exemption is violated. The project has not operated since 2004, and has been abandoned by the exemptee. By not operating the project as proposed and authorized, the exemptee is in violation of the terms and conditions of the exemption.

On October 25, 2007, the Commission directed the exemptee to file a report stating its reason for abandoning project operation and plans for either resuming operation and restoring the project or surrendering the exemption. A response was not filed by the exemptee. On February 11, 2009, the Commission reiterated its directive to file a report stating its reason for abandoning project operation and plans for either resuming operation and restoring the project or surrendering the exemption. A response was not filed by the exemptee.

On April 1, 2010, the Commission informed the exemptee that it was in violation of the terms and conditions of the exemption. The Commission required the exemptee to show cause within 30 days why the exemption should not be revoked. A response was not filed by the exemptee. To date, the information requested from the exemptee has not been filed and the project remains inoperative.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules 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 proceeding.

o. Filing and Service of Responsive Documents—Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE," as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, protests, or motions to intervene should relate to project works which are the subject of the termination of exemption. A copy of any protest or motion to intervene must be served upon each representative of the exemptee specified in item g above. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this notice must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: February 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–3159 Filed 2–10–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2010–0835; FRL–9265–8]

Agency Information Collection Activities; Proposed Collections; Toxic Chemical Release Reporting; Request for Comments on Proposed Renewal of Form R and Form A, Including Minor Form Revisions and the Ratio-Based Burden Methodology

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2011. The ICR Supporting Statement, which is summarized below and also posted in the docket, along with a technical document titled "Revising TRI Burden to Ratio-Based Methodology," describes the nature of the information collection (including proposed form changes) and its estimated burden and cost. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 12, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2010–0835, by one of the following methods:

- U.S. Government Web site for Federal Rulemaking, follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Office of Environmental Information (OEI) Docket, U.S. Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the docket's normal hours of operations, 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: To submit a comment to the docket, direct your comments to Docket ID No. EPA–HQ–OEI–2010–0835. EPA's policy is that all comments received will be included in the public docket without change and will be made available online at *http://www.regulations.gov,* including any personal information that has been provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that is considered to be CBI or otherwise protected information through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comments. 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. When preparing electronic files, avoid using special characters or any form of encryption and ensure that the electronic files to be submitted are free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number, 202–566–0753; e-mail address, *vail.cassandra@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for the ICR described in this notice under Docket ID No. EPA–HQ–OEI–2010–0835, which is available for online viewing at *http://www.regulations.gov.* Go to *http://www.regulations.gov* to obtain a copy of the proposed collection of information, to submit or view public comments, to obtain an index of the docket contents, and to obtain those documents in the public docket that are available electronically. Once in the system, select "search," then enter the docket ID number identified in this document.

The docket is also available for viewing in person at the OEI Docket, EPA Docket Center (EPA/DC), U.S. EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The phone number for the Reading Room is 202–566–1744, and the phone number for the OEI Docket is 202–566–1752.

In which information is EPA particularly interested?

Pursuant to section 3506(c)(2)(a) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it 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, including the validity of the new Ratio-Based Burden Methodology;

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 the electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples;

2. Describe any assumptions that you used;

3. Provide copies of any technical information and/or data you used that support your views;

4. If you provide estimates of potential burden hours or labor costs, explain how you arrived at your estimates;

5. Offer alternative ways to improve the collection activity;

6. Make sure to submit your comments by the deadline identified under **DATES**; and

7. To ensure proper receipt by EPA, identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected Entities: This ICR applies to facilities that submit annual reports under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). The applicability criteria are outlined in part 372, subpart B, of Title 40 of the Code of Federal Regulations, and potentially affected categories and entities may include, but are not limited to the following:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. * Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities.

If you have questions regarding the applicability of this action to a particular entity, consult the individual listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Title: Toxic Chemical Release Reporting (Form R); Toxic Chemical Release Reporting, Alternate Threshold for Low Annual Reportable Amounts (Form A) and the Ratio-Based Burden Methodology.

ICR Numbers: EPA ICR No. 1363.21, OMB Control No. 2025–0009 (TRI Form R) and EPA ICR No. 1704.13, OMB Control No. 2025–0010 (TRI Form A Certification Statement). EPA proposes to combine these two ICRs into one overarching ICR, which will retain the OMB Control No. 2025–0009.

ICR Status: The ICRs for the TRI Form R and the TRI Form A Certification Statement are scheduled to expire on July 31, 2011.

Abstract: Pursuant to section 313 of EPCRA, certain facilities that manufacture, process, or otherwise use specified toxic chemicals in amounts above reporting threshold levels must submit annually to EPA and to designated State officials toxic chemical release forms containing information specified by EPA. 42 U.S.C. 11023. In addition, pursuant to section 6607 of the Pollution Prevention Act (PPA), facilities reporting under section 313 of EPCRA must also report pollution prevention and waste management data, including recycling information, for such chemicals. 42 U.S.C. 13106. These reports are compiled and stored in EPA's database known as the Toxics Release Inventory (TRI); TRI data are made readily available to the public.

Regulations at 40 CFR part 372, subpart B, require facilities that meet all of the following criteria to report:

1. The facility has 10 or more full-time employee equivalents (*i.e.,* a total of 20,000 hours worked per year or greater; *see* 40 CFR 372.3); and

2. The facility is included in a North American Industry Classification System (NAICS) Code listed at 40 CFR 372.23 or under Executive Order 13148, Federal facilities regardless of their industry classification; and

3. The facility manufactures (defined to include importing), processes, or otherwise uses any EPCRA section 313 (TRI) chemical in quantities greater than the established thresholds for the specific chemical in the course of a calendar year.

Facilities that meet the criteria must file a Form R report or, in some cases, may submit a Form A Certification Statement, for each listed toxic chemical for which the criteria are met. As specified in EPCRA section 313(a), the report for any calendar year must be submitted on or before July 1st of the following year. For example, reporting year 2009 data should have been submitted and certified on or before July 1, 2010.

The list of toxic chemicals subject to TRI reporting can be found at 40 CFR 372.65. This list is also published every year as Table II in the current version of the Toxics Release Inventory Reporting Forms and Instructions. The current TRI chemical list contains 593 chemicals and 30 chemical categories.

TRI data are used by environmental agencies, industry, and the public. EPA program offices use TRI data, along with other data, to help establish programmatic priorities, evaluate potential hazards to human health and the natural environment, and undertake appropriate regulatory and/or enforcement activities. Environmental and public interest groups use the data to better understand toxic chemical releases at the community level and to work with industry, government agencies, and others to promote reductions in toxic chemical releases. Industrial facilities use the TRI data to evaluate the efficiency of their production processes and to help track and communicate their progress in achieving pollution prevention goals.

The TRI data are unique in providing a multi-media (air, water, and land) picture of toxic chemical releases, transfers, and other waste management activities by covered facilities on a

yearly basis. While other environmental media programs provide some toxic chemical data and related permit data, the data are not directly comparable to TRI data with regard to the types of chemicals and industry sectors that are covered or the frequency of reporting. Facilities that are subject to TRI reporting must submit reports for each calendar year to EPA and the States in which they are located by July 1st of the following year.

Respondents may claim trade secrecy for a chemical's identity as described in EPCRA Section 322 and its implementing regulations in 40 CFR part 350. EPA will disclose information that is covered by a claim of trade secrecy only to the extent permitted by and in accordance with the procedures in 40 CFR part 350 and 40 CFR part 2.

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. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be 35.71 hours for Form R and 21.96 hours for a Form A. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting/validating/verifying information, processing and maintaining information, and disclosing and providing information; adjust existing ways to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR Supporting Statement provides a detailed explanation of the Agency's estimate for TRI program burden, including Form R/A burden, which is only briefly summarized here:

- *Estimated total number of respondents (i.e., facilities):* 20,871.
- *Frequency of response:* Annual.
- *Estimated total average number of responses:* 73,727.
- *Estimated total average number of responses for each respondent:* 3.53.
- *Estimated total annual burden hours:* 3,515,751 hours.
- *Estimated total annual costs:* $174,451,565.

What changes are included in this ICR?

OMB approved the ICR for Form R and the ICR for the Form A Certification Statement on March 2, 2008, with original expiration dates of March 31, 2011. On February 17, 2010, OMB approved an extension of the expiration dates for both forms to July 31, 2011. The OMB approved burden numbers on March 2, 2008, where 3,217,280 hours for Form R and 515,901 hours for Form A, totaling 3,733,181 hours.

Several changes in the burden estimates have been approved by OMB since the OMB approvals of the ICRs on March 2, 2008. On March 20, 2009, OMB approved the merging of the ICR for TRI detailed reporting on dioxin and dioxin-like compounds (OMB 2025–007, ICR 2086.02), into the TRI Form R ICR (currently OMB Control Number 2025–0009), increasing burden by 899 hours. Then on March 27, 2009, OMB approved changes in the number of responses and the burden hours for Form R and Form A to reflect the passage of Section 425 of the Omnibus Appropriations Act of 2009, which rescinded the December 2006 Toxics Release Inventory Burden Reduction Rule. As a result, the OMB-approved numbers for Form R were increased by 140,565 hours and for Form A burden were decreased by 318,418 yielding a net increase of 458,983 hours. Most recently, on November 26, 2010, the Addition of National Toxicology Program Carcinogens rule was published in the **Federal Register**. This rule is estimated to increase the number of reporting facilities by 74 and the number of Form Rs submitted by 186 with an associated burden increase of 6,641 hours.

Meanwhile, over the past several years, there has been a slight decrease in the number of facilities reporting to TRI. Based on the latest data for Reporting Year 2009 plus updates to reflect changes during the year of the ICR project—in this case, the modeled number of chemicals and facilities estimated to report under the Addition of National Toxicology Program Carcinogens rule, EPA now estimates the total number of combined Form R and Form A responses to be 73,727, with the associated total annual burden hours to be 3,515,751, and the annual cost to be $174,451,565. For a detailed explanation of the Agency's estimates of the respondent reporting burden and labor costs, please refer to the proposed TRI Form R and A Supporting Statement and the document "Revising TRI Burden to Ratio-Based Methodology," which are available in the docket.

EPA is interested in comments regarding methodology revisions documented in the peer-reviewed technical document titled, "Revising TRI Burden to Ratio-Based Methodology," which is available through the docket. The revised methodology, Ratio-Based Burden Methodology (RBBM), simplifies calculations, imposes internal consistency, and sharpens transparency while retaining the components of the existing methodology and maintaining the overall total burden estimate as a starting point. EPA invites comments specifically regarding evidence that would quantify the ratio of PBT/non-PBT burden for the TRI reporting community overall.

Additionally EPA is seeking comments on an alternate instruction for the revision of Form R Section 8.11 in which facilities report ongoing and newly implemented source reduction activities. The alternate instructions would limit the scope of "ongoing source reduction activities" to those implemented in the previous five years.

EPA is proposing to make several changes to the TRI reporting forms and associated instructions, but these changes are estimated to have a negligible effect on form unit burden. The proposed changes, which are outlined below, are designed to help enhance the overall utility of the data collected under the TRI Program.

1. Remove the NA box from the Parent Company field (Part I: Sec. 5,.5.1) *Rationale:* The NA box is currently used to indicate a foreign parent company. Removing this box and requiring facilities to report the highest level U.S. parent company will facilitate analysis of the TRI data at the parent company level.

2. Disaggregate the "Total Transfers" field and add fields to identify chemical discharge quantities to specific publicly owned treatment works (POTWs) (Part II: Sec 6.1). *Rationale:* The current form collects a single "Total Transfer" quantity for transfers to all POTWs. Providing separate fields for the transfer quantity to each POTW will facilitate analysis of the releases to specific watersheds.

3. Section 8 enhancements, including:

- Change instructional statement on form to include "newly implemented and/or ongoing" source reduction activities (Part II: Sec. 8.10).
- Add an N/A box to match associated text revisions (Part II: Sec. 8.10).
- Add a field to allow separate reporting for both new and ongoing

source reduction activities (Part II: Sec. 8.10, 8.10.1–4).

• Remove the "Yes" box and enlarge the text section for the question on optional pollution prevention information (Part II: Section 8.11).

Rationale: The current form requests information on "any source reduction activities for this chemical during the reporting year;" but the Reporting Forms and Instructions request information on "newly implemented" source reduction activities. These form changes will remove this difference, allow facilities to distinguish between new and ongoing source reduction activities, and provide additional optional information on source reduction, recycling, or pollution control activities on the form itself (in box 8.11).

4. Add a new question to capture miscellaneous and optional information regarding the submission (Part II: Sec. 9., 9.1). *Rationale:* This new text box will allow facilities to provide optional, miscellaneous information that may be helpful to EPA and/or the public in using or interpreting their data (*e.g.,* facility closures, explanations for changes in release quantities, *etc.*).

5. Add NA boxes to Part II, Sections 5.3, 6.1, and 6.2. *Rationale:* Adding NA boxes to these sections will make the formatting of Form R and Form R Schedule 1 more consistent.

What is the next step in the process for these ICRs?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice for the ICR pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 6, 2011.

Robin Gonzalez,

Acting Director, Office of Information Analysis and Access, Office of Environmental Information.

[FR Doc. 2011–3100 Filed 2–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8995–3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 01/31/2011 through 02/04/2011.

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110032, Final EIS, BLM, WY, Westside Land Conveyance Project, Congressionally-Mandated Transfer of 16,500 Acres of Public Land to the Westside Irrigation District, Big Horn and Washakie Counties, WY, Review Period Ends: 03/14/2011, Contact: Chris Carlton 307–775–6227.

EIS No. 20110033, Final Supplement, USFS, WY, EIS Title: Bridger-Teton National Forest, Proposal to Determine What Terms and Conditions to Allow Development of Oil and Gas Leasing in the Wyoming Range, Sublette County, WY, Review Period Ends: 03/14/2011, Contact: John Kuzloski 307–739–5568.

EIS No. 20110034, Draft EIS, FHWA, WI, U.S. 41 Improvement Project, Extend from Depere—Suamico (Memorial Drive to County M), Brown County, WI, Comment Period Ends: 03/28/2011, Contact: George Poirier 608–829–7500.

EIS No. 20110035, Draft EIS, USFS, OR, North End Sheep Allotment Project, Proposes to Authorize Grazing Domestic Sheep, Walla Walla Range District of the Umatilla National Forest, Wallowa, Union, and Umatlla Counties, OR, Comment Period Ends: 03/28/2011, Contact: Michael L. Rassbach 509–522–6290.

Amended Notices

EIS No. 20100444, Final EIS, BLM, NV, Tonopah Solar Energy Crescent Dunes Solar Energy Project, a 7,680–Acre Right-of-Way (ROW) on Public Lands to Construct a Concentrated Solar Thermal Power Plant Facility, Nye County, NV, Contact: Julie Ann Smith 202–586–7668. Revision to FR Notice Published 11/19/2010: The U.S. Department of Energy's has adopted the Department of Interior's Bureau of Land Management FEIS #20100444, filed 11/10/2010. DOE was a cooperating agency for the above project. Recirculation of the FEIS is not necessary under 40 CFR 1506.3(c).

Dated: February 8, 2011.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–3115 Filed 2–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9265–4]

Notice of Open Meeting of the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold a meeting on March 8–9, 2011. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

The purpose of the meeting is to hear from informed speakers on environmental finance issues, proposed legislation, Agency priorities and to discuss progress with work projects under EFAB's current Strategic Action Agenda.

Environmental Finance topics expected to be discussed include: Financing Clean Air Technology; Voluntary Environmental Improvement Bonds (VEIB)/Property Assessed Clean Energy (PACE) Financing Environmental Improvements; Financing Infrastructure for Tribal Communities; and Leveraging Private

Investments to Create Sustainable Communities.

The meeting is open to the public, however, seating is limited. All members of the public who wish to attend the meeting should register in advance, no later than Monday, February 28, 2011.

DATES: Tuesday, March 8, 2011 from 1:30 p.m.–5 p.m. and Wednesday, March 9, 2011 from 9 a.m.–5 p.m.

ADDRESSES: Crowne Plaza Old Town Alexandria Hotel, 901 North Fairfax Street, Alexandria, VA 22314.

Registration and Information Contact

For information on access or services for individuals with disabilities, or to request accommodations for a person with a disability, please contact Sandra Williams, U.S. EPA, at (202) 564–4999 or *williams.sandra@epa.gov,* at least 10 days prior to the meeting, to allow as much time as possible to process your request.

Dated: February 4, 2011.

Joseph L. Dillon,

Director, Center for Environmental Finance.

[FR Doc. 2011–3113 Filed 2–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9265–9]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Nominations to the Good Neighbor Environmental Board.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Good Neighbor Environmental Board. Vacancies are anticipated to be filled by May 2011. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

Background: GNEB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. GNEB was created in 1992 by the Enterprise for the Americas Initiative Act, Public Law 102–532, 7 U.S.C. 5404. Implementing authority was delegated to the Administrator of EPA under Executive Order 12916. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the States of Arizona, California, New Mexico and Texas; and Tribal and private organizations to provide advice on environmental and infrastructure issues along the U.S./Mexico Border. Members are appointed by the EPA Administrator for two year terms with the possibility of reappointment to a second term. The Board meets approximately three times annually, twice at various locations along the U.S.-Mexico border and once in Washington, DC. The Board is responsible for providing guidance to the President and Congress on environmental and infrastructure issues along the U.S.-Mexico border in the form of an annual report and through advice letters. EPA provides reimbursement for travel and other incidental expenses associated with official government business. The GNEB is seeking nominations from a variety of nongovernmental interests along the U.S.-Mexico border from the private sector, academia, environmental groups, health groups, ranching and grazing, energy, and other relevant sectors. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The following criteria will be used to evaluate nominees:

- Representative of a sector or group that helps to shape border-region environmental policy or representatives of a group that is affected by border-region environmental policy.
- Has extensive professional knowledge and experience with the particular issues that the Board examines (*i.e.* environmental and infrastructure issues along the U.S.-Mexico border), including the bi-national dimension of these issues.
- Bring senior level experience that will fill a need of the Board of bringing a new and relevant dimension to its deliberations.
- Possesses a demonstrated ability to work in a consensus building process with a wide range of representatives from diverse constituencies.
- Ability to contribute approximately 10 to 15 hours per month to the Board's activities, including face-to-face meetings, conference calls, participation on the Board's annual report to the President and Congress and comment letters.
- Nominees may self-nominate by submitting a resume describing their professional and educational qualifications, including current business address, e-mail and daytime telephone number.
- All nominees must demonstrate the potential for active and constructive involvement in the Board's work.

To help the Agency in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

ADDRESSES: Submit nominations to Mark Joyce, Acting Designated Federal Officer, Office of Federal Advisory Committee Management and Outreach (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also e-mail nominations with the subject line COMMITTEE RESUME 2011 to *joyce.mark@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Acting Designated Federal Officer, U.S. EPA, telephone 202–564–2130, fax: 202–564–8129.

Dated: February 7, 2011.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2011–3104 Filed 2–10–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9263–9]

Public Water System Supervision Program Revision for the State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR 142.13, public notice is hereby given that the State of Utah has revised its Public Water System Supervision (PWSS) Program by adopting Federal regulations for the Groundwater Rule, which correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR parts 141 and 142. The EPA has completed its review of these revisions in accordance with the SDWA and proposes to approve Utah's primacy revisions for the above stated Rules.

Today's approval action does not extend to public water systems in Indian country, as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public may request a public hearing on this determination by March 14, 2011. Please *see* **SUPPLEMENTARY INFORMATION,** Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective March 14, 2011. If a hearing is granted,

then this determination shall not become effective until such time following the hearing, as the RA issues an order affirming or rescinding this action.

ADDRESSES: Requests for a public hearing shall be addressed to: James B. Martin, Regional Administrator, c/o Karen Shirley (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Drinking Water Program, 1595 Wynkoop Street, Denver, CO 80202–1129, (2) Utah Department of Environmental Quality, Division of Drinking Water, Utah State Office Park—Building One, 195 North 1950 West, Salt Lake City, UT 84144–4830.

FOR FURTHER INFORMATION CONTACT: Karen Shirley at 303–312–6104.

SUPPLEMENTARY INFORMATION: EPA previously approved Utah's application for assuming primary enforcement authority for the PWSS Program, pursuant to section 1413 of SDWA, 42 U.S.C. 300g–2, and 40 CFR part 142. Utah's Division of Drinking Water administers Utah's PWSS Program.

A. Why are revisions to State programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWR at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWR in order to retain primacy (40 CFR 142.12(a)).

B. How does today's action affect Indian country in Utah?

Utah is not authorized to carry out its PWSS Program in "Indian country." This includes the lands within the reservations of the Confederated Tribes of the Goshute, the Navajo Nation, the Northwestern Band of Shoshoni Nation of Utah (Washakie), the Paiute Indian Tribe of Utah, the Skull Valley Band of Goshute Indians of Utah, and the Ute Mountain Ute Tribe of the Ute Mountain Reservation; Indian country lands of the Uintah and Ouray Reservation; any land held in trust by the United States for an Indian Tribe; and any other areas that are "Indian country" within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and newspapers of general circulation in the State. A notice will also be sent to both the person(s) requesting the hearing and the State. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: January 11, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–2859 Filed 2–10–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT IMPORT BANK OF THE UNITED STATES

[OMB Control No: 3048–0024 EIB 92–79]

Agency Information Collection: Emergency Submission for OMB Review

AGENCY: Export Import Bank of the United States.

ACTION: Notice (2011–0020).

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the Export Import Bank of the United States (Ex-Im), will submit to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information in reference to the Broker Registration Application Form EIB 92–79.

This application is used by insurance brokers to register with the Export Import Bank. The application provided the Export Import Bank staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under the Export Import Bank's credit insurance programs. The Export Import Bank is submitting this emergency submission for a six (6) month approval from OMB to provide time to revise the application and update their burden hours. The Bank will be removing the question in reference to women and/or ethnic minority owned.

After the publication of this notice in the **Federal Register** and Office of Management and Budget approval for the six (6) month emergency submission, the Export Import Bank will proceed with the normal approval process and publish the 60 day and 30 day public comment notices in the **Federal Register**.

Titles and Form Number: EIB 92–79 Broker Registration Form.

OMB Number: 3048–0024.

Type of Review: Emergency Submission.

Need and Use: This application is used by insurance brokers to register with Export Import Bank. The application provides Export Import Bank staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under Export Import Bank's credit insurance programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 50.

Estimated Time per Respondent: 2 hours.

Government Annual Burden Hours: 200 hours.

Frequency of Reporting or Use: Once every three (3) years.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2011–3099 Filed 2–10–11; 8:45 am]

BILLING CODE 6690–01–P

EXPORT IMPORT BANK OF THE UNITED STATES

[OMB Control No: 3048–0016 EIB 92–36]

Agency Information Collection: Emergency Submission for OMB Review

AGENCY: Export Import Bank of the United States.

ACTION: Notice (2011–0021).

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501–3521), this notice announces that the Export Import Bank of the United States (Ex-Im), will submit

to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information in reference to the Application for Issuing Bank Credit Limit (IBCL) Under Bank Letter of Credit Policy.

The Application for Issuing Bank Credit Limit (IBCL) Under Bank Letter of Credit Policy will be used by entities involved in the export of US goods and services. The Export Import Bank is submitting this emergency submission for a six (6) month approval from OMB to provide time to revise the application and update their burden hours.

The Bank will be removing the questions 6h and 6i and revising the burden hours. After the publication of this notice in the **Federal Register** and Office of Management and Budget approval for the six (6) month emergency submission, the Export Import Bank will proceed with the normal approval process and publish the 60 day and 30 day public comment notices in the **Federal Register**.

EIB 92–36 Application for Issuing Bank Credit Limit (IBCL) under Bank Letter of Credit Policy

OMB Number: 3048–0016.

Type of Review: Emergency Submission.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its long term guarantee and direct loan programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 480.

Estimated Time per Respondent: 20 minutes.

Government Annual Burden Hours: 480 hours.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2011–3108 Filed 2–10–11; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 2, 2011.

Summary: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

Dates: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 12, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

Addresses: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

For Further Information Contact: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

Supplementary Information:

OMB Control Number: 3060–1140.

Title: Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, Order, PS Docket No. 06–229, DA 10–2342.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: State, local or Tribal government.

Number of Respondents and Responses: 50 respondents; 350 responses.

Estimated Time per Response: 5 hours to 50 hours.

Frequency of Response: Quarterly and one time reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154(i), 301, 303, 332 and 337.

Total Annual Burden: 23,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no general need for confidentiality. However, petitioners may, as appropriate, request confidential treatment of information pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission adopted an Order, DA 10–2342, which requires public safety broadband waiver recipients to certify, at various stages of deployment, their compliance with technical requirements set forth in the Order, and to submit additional information regarding their early deployments. The Order provides that waiver recipients may include this information in their quarterly reports to the Commission's Public Safety and Homeland Security Bureau, which are required to be submitted under a previous order, FCC 10–79. The revised information collections required under this Order will enable the Commission and Bureau to monitor the progress of 700 MHz public safety broadband waiver recipients' network deployments and ensure that such deployments are consistent with the Commission's long-standing goal of ensuring nationwide interoperability among public safety broadband networks.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–3051 Filed 2–10–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 11–7; DA 11–58]

Glenn A. Baxter, Application To Renew License for Amateur Radio Service Station K1MAN

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission initiates a hearing proceeding before a Commission Administrative Law Judge to determine

whether an application to renew the license for Amateur Radio Service Station K1MAN filed by Glenn A. Baxter should be granted.

DATES: The document was mailed to the party on February 3, 2011.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judy Lancaster, Enforcement Bureau, at *Judy.Lancaster@fcc.gov* or (202) 418–7584 or TTY (202) 418–1152.

SUPPLEMENTARY INFORMATION: This is a summary of the *Hearing Designation Order* in WT Docket No. 11–7, DA 11–58, adopted by the Commission's Wireless Telecommunications Bureau on January 10, 2011, and released on January 12, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis of the Order

1. In this *Hearing Designation Order,* the Commission commences a hearing proceeding before a Commission Administrative Law Judge to determine whether the above-captioned application filed by Glenn A. Baxter for renewal of his license for Amateur Radio Station K1MAN should be granted. As discussed below, the record before us indicates that Baxter has apparently willfully and repeatedly engaged in unlawful Commission-related activities, including intentionally causing interference to ongoing communications of other amateur stations, transmitting communications in which he had a pecuniary interest, failing to file requested information pursuant to an Enforcement Bureau directive, broadcasting without communicating with any particular station, and failing to exercise control of his station. Based on the information before us, we believe that Baxter's apparent continuing course of misconduct raises a substantial and material question of fact as to whether he possesses the requisite character qualifications to be and remain a Commission licensee. Accordingly, we hereby designate his application for hearing.

2. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 309(e), the captioned application *is designated for hearing* in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order,* upon the following issues:

(a) To determine whether Glenn A. Baxter willfully and/or repeatedly violated Section 333 of the Communications Act of 1934, as amended, and § 97.101(d) of the Commission's rules, by willfully or maliciously interfering with radio communications;

(b) To determine whether Glenn A. Baxter willfully and/or repeatedly violated § 97.113(b) of the Commission's rules by broadcasting one-way communications on amateur frequencies;

(c) To determine whether Glenn A. Baxter willfully and/or repeatedly violated § 97.105 of the Commission's rules by failing to ensure the immediate proper operation of his station;

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Glenn A. Baxter is qualified to be and remain a Commission licensee;

(e) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned application filed by Glenn A. Baxter should be granted.

3. *It is further ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.221(c) of the Commission's rules, 47 CFR 1.221(c), in order to avail himself of the opportunity to be heard, Glenn A. Baxter, in person or by his attorney, *shall file* with the Commission, within twenty calendar days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

4. *It is further ordered* that, pursuant to § 1.221(c) of the Commission's rules, 47 CFR 1.221(c), if Glenn A. Baxter fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administrative Law Judge *shall dismiss* the captioned application with prejudice for failure to prosecute.

5. *It is further ordered* that the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

6. *It is further ordered* that, pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 309(e), the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above *shall be* on Glenn A. Baxter.

7. *It is further ordered* that a copy of this *Hearing Designation Order* or a summary thereof *shall be published* in the **Federal Register**. This action is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, and 0.331.

Federal Communications Commission.

Scot Stone,

Deputy Chief, Mobility Division.

[FR Doc. 2011–3145 Filed 2–10–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

Correction

In notice document 2011–2764 appearing on pages 6788–6789 in the issue of Tuesday, February 8, 2011, make the following correction:

On page 6788, in the third column, in the **DATES** section, in the second and third lines, "[insert date 60 days after FR publication date]" should read "April 11, 2011".

[FR Doc. C1–2011–2764 Filed 2–10–11; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time

to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: February 7, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC ref. No.	Bank name	City	State	Date closed
10336	American Trust Bank	Roswell	GA	2/4/2011
10337	Community First Bank Chicago	Chicago	IL	2/4/2011
10338	North Georgia Bank	Watkinsville	GA	2/4/2011

[FR Doc. 2011–3075 Filed 2–10–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: February 16, 2011—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: The meeting will be an Open Session.

Matters To Be Considered

Open Session

1. Initiative to Modernize the Commission's Rules of Practice and Procedure.
2. Initiative to Review Commission Regulations Consistent with the President's Executive Order 13563: Improving Regulation and Regulatory Review.
3. Docket No. 10–03: Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements—Consideration of Draft Final Rule.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–3261 Filed 2–9–11; 4:15 pm]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Charles M. Shea,* Wilmette, Illinois; as an individual, and by the control group including the Betty J. Bradshaw 2000 Irrevocable Trust dated 10/30/00, Chicago, Illinois, Charles M. Shea, Wilmette, Illinois, as Trustee, and Molly Boed, Wassenaar, Netherlands, as committee member of the Betty Bradshaw 2000 Irrevocable Trust dated 10/30/00; to acquire control of First Community Bancshares Corp., Anamosa, Iowa, and thereby indirectly acquire control of Citizens Savings Bank, Anamosa, Iowa, and First Community Bank, Milton, Wisconsin.

Board of Governors of the Federal Reserve System on February 8, 2011.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2011–3077 Filed 2–10–11; 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 March 10, 2011.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. *First Connecticut Bancorp, Inc.,* Farmington, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Farmington Bank, Farmington, Connecticut.

Board of Governors of the Federal Reserve System, February 8, 2011.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2011–3078 Filed 2–10–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Request for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3521, the FTC is seeking public comments on its proposal to extend through February 28, 2014, the current PRA clearance for information collection requirements contained in its Informal Dispute Settlement Procedures Rule. That clearance expires on February 28, 2011. The FTC will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review.

DATES: Comments must be received on or before March 14, 2011.

ADDRESSES: Interested parties may submit written comments by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using this Web link: *https://ftcpublic.commentworks.com/ftc/idsrpra2.* Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Svetlana S. Gans, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–286, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3708.

SUPPLEMENTARY INFORMATION:

Title: Informal Dispute Settlement Procedures Rule, 16 CFR part 703.

OMB Control Number: 3084–0113.

Type of Review: Extension of a currently approved collection.

Abstract: The Informal Dispute Settlement Procedures Rule (the Dispute Settlement Rule or the Rule) specifies the minimum standards which must be met by any informal dispute settlement mechanism (IDSM) that is incorporated into a written consumer product warranty and which the consumer must use before pursuing legal remedies under the Act in court. These minimum standards for IDSMs include requirements concerning the mechanism's structure (*e.g.,* funding, staffing, and neutrality), the qualifications of staff or decision makers, the mechanism's procedures for resolving disputes (*e.g.,* notification, investigation, time limits for decisions, and follow-up), recordkeeping, and annual audits. The Rule requires that IDSMs establish written operating procedures and provide copies of those procedures upon request. The Rule applies only to those firms that choose to be bound by it by requiring consumers to use an IDSM. A warrantor is free to set up an IDSM that does not comply with the Rule as long as the warranty does not contain a prior resort requirement.

On November 24, 2010, the Commission sought comment on the information collection requirements associated with the Dispute Settlement Rule. 75 FR 71704. No comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Estimated Annual Burden: 13,000 hours rounded to nearest thousand (9,114 hours for recordkeeping + 3,038 hours for reporting + 1,114 for disclosures).

Likely Respondents, Estimated Number of Respondents, Estimated Average Burden per Respondent:

(a) Recordkeeping—IDSMs, 2, 30 minutes/case for 18,227 annual consumer cases;

(b) Reporting—IDSMs, 2, 10 minutes/case for 18,227 annual consumer cases; and

(c) Disclosures—Warrantors, 27, annual 30 hours; IDSMs, 2, 5 minutes/case for 3,645 consumer cases.

Frequency of Response: Periodic.

Total Annual Labor Cost: 265,000 rounded to nearest thousand.

Total Annual Capital or Other Non-Labor Cost: 322,000 rounded to the nearest thousand.

Request for Comments

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Warranty Rules: Paperwork Comment, FTC File No. P044403" to facilitate the organization of comments. Please note that your comment—including your name and your State—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because your comments will be made public, you are solely responsible for ensuring that it does not include any sensitive personal information, such as any individual's Social Security number, date of birth, driver's license number or other State identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. It is also your own responsibility to ensure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. Your comment should also not include any "[t]rade secret or any commercial or financial information * * * which is privileged or confidential." *See* Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). No comment, whether it contains such material or not, will be given confidential treatment unless the comment has been filed with the FTC Secretary; the comment is accompanied by a written confidentiality request that complies fully with FTC Rule 4.9(c), 16 CFR 4.9(c);[6] and the General Counsel, in his or her sole discretion, has determined to grant the request in accordance with applicable law and the public interest.

Please submit your comments in electronic form or send them by courier or overnight service. To ensure that the Commission considers an electronic comment, you must file it at *https://ftcpublic.commentworks.com/ftc/idsrpra2,* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

A comment filed in paper form should include the "Warranty Rules: Paperwork Comment, FTC File No. P044403" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600

[6] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments should also be submitted via facsimile to OMB at (202) 395–5167 and addressed as follows: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. In case it is needed, the OMB mail address is: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503. The OMB requests that any comment filed in paper form be sent by courier or overnight service.

The Commission will consider responsive public comments received on or before March 14, 2011.

Willard K. Tom,

General Counsel.

[FR Doc. 2011–3169 Filed 2–10–11; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0293; Docket No. 2010–0002; Sequence 23]

Submission for OMB Review; OMB Control No. 3090–0293; Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements

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 the Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements. A request for public comments was published in the **Federal Register** at 75 FR 60756, on October 1, 2010. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements, 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 March 14, 2011.

ADDRESSES: Submit comments identified by Information Collection 3090–0293, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090–0293, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090–0293, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–0293, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements" 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 3090–0293.

Instructions: Please submit comments only and cite Information Collection 3090–0293, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements, 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 is necessary in order to comply with section 872 of the Duncan Hunter National Defense Authorization Act of 2009, Public Law 110–417, as amended by Public Law 111–212, hereafter referred to as "the Act." The Act requires GSA to establish and maintain a database of information regarding the integrity and performance of certain entities awarded Federal grants and contracts and use of the information by Federal officials making awards. OMB proposed implementing guidance for grants and cooperative agreements on February 18, 2010 (75 FR 7316). That guidance is in the process of being finalized. The proposed guidance requires appropriate Federal officials to report on terminations of awards due to material failure to comply with award terms and conditions; administrative agreements with entities to resolve suspension or debarment proceedings; and findings that entities were not qualified to receive awards. Through a new award term, each recipient would provide information about certain civil, criminal, and administrative proceedings that reached final disposition within the most recent five-year period and were connected with the award or performance of a Federal or State award. As section 872 requires, an entity also would be able to submit comments to the data system about any information that the system contains about the entity.

B. Annual Reporting Burden

Initial Response

Respondents: 11,500.
Responses Per Respondent: 1.
Total Annual Responses: 11,500.
Hours Per Response: .1.
Total Response Burden Hours: 1,150.

Additional Response

Respondents: 1,600.
Responses Per Respondent: 2.
Total Annual Responses: 3,200.
Hours Per Response: .5.
Total Response Burden Hours: 1,600.
Recordkeeping Hours: 160,000.
Total Burden Hours: 162,750.
Obtaining Copies of Proposals: Requesters may obtain a copy of the

information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0293, Reporting and Use of Information Concerning Integrity and Performance of Recipients of Grants and Cooperative Agreements, in all correspondence.

Dated: February 2, 2011.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2011–3107 Filed 2–10–11; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from Texas City Chemicals, Inc., Texas City, Texas, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On January 6, 2011, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at Texas City Chemicals, Inc., from October 5, 1953, through September 30, 1955, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on February 5, 2011, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on February 5, 2011, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–3061 Filed 2–10–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from Simonds Saw and Steel Co., Lockport, New York, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On January 6, 2011, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at Simonds Saw and Steel Co. from January 1, 1948 through December 31, 1957, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on February 5, 2011, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on February 5, 2011, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–3063 Filed 2–10–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from BWX Technologies, Inc., Lynchburg, Virginia, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On January 6, 2011, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at BWX Technologies, Inc., in Lynchburg, Virginia during the period from January 1, 1985 through November 30, 1994, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on February 5, 2011, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on February 5, 2011, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director,

National Institute for Occupational Safety and Health.

[FR Doc. 2011–3062 Filed 2–10–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Delisting From Apollo Publishing, Inc.

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: Apollo Publishing, Inc.: AHRQ has accepted a notification of voluntary relinquishment from Apollo Publishing, Inc., of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41,42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on December 7, 2010.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from Apollo Publishing, Inc., PSO number P0031, to voluntarily relinquish its status as a PSO. Accordingly, Apollo Publishing, Inc. was delisted effective at 12 Midnight ET (2400) on December 7, 2010.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: January 28, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–2909 Filed 2–10–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Delisting From Oregon Patient Safety Commission

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of delisting.

SUMMARY: Oregon Patient Safety Commission: AHRQ has accepted a notification of voluntary relinquishment from Oregon Patient Safety Commission of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoingand reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on November 22, 2010.

ADDRESSES: Both directories can be accessed electronically at thefollowing HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; ITY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from Oregon Patient Safety Commission, PSO number P0018, to voluntarily relinquish its status as a PSO. Accordingly, Oregon Patient Safety Commission was delisted effective at 12 Midnight ET (2400) on November 22, 2010.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: January 28, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–2917 Filed 2–10–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Delisting From HealthDataPSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: HealthDataPSO: AHRQ has accepted a notification of voluntary

relinquishment from HealthDataPSO, a component entity of CCD Healthsystems and Medical Error Management, LLC, of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on December 7, 2010.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TY (local): (301) 427–1130; E-mail: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 4S0 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from HealthDataPSO, a component entity of CCD Healthsystems and Medical Error Management, LLC, PSO number P0045, to voluntarily relinquish its status as a PSO. Accordingly, HealthDataPSO, a component entity of CCD Healthsystems and Medical Error Management, LLC, was delisted effective at 12 Midnight ET (2400) on December 7, 2010.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: January 28, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–2914 Filed 2–10–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Delisting From Quality Excellence, Inc./PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: Quality Excellence Inc./PSO: AHRQ has accepted a notification of voluntary relinquishment from Quality Excellence Inc./PSO, a component entity of Arkansas Foundation for Medical Care, of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a P50 an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on December 7, 2010.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; *E-mail: pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule CPDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from Quality Excellence Inc./PSO, a component entity of Arkansas Foundation for Medical Care, PSO number P0037, to voluntarily relinquish its status as a PSO. Accordingly, Quality Excellence Inc./PSO, a component entity of Arkansas Foundation for Medical Care, was delisted effective at 12 Midnight ET (2400) on December 7, 2010. More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: January 28, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–2913 Filed 2–10–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Delisting From Lumetra PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: Lumetra PSO: AHRQ has accepted a notification of voluntary relinquishment from Lumetra PSO, a component entity of Lumetra Healthcare Solutions, of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21—b–26,

provides for the formation of PSO5, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on December 7, 2010.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of Federally approved PSOs. AHRQ has accepted a notification from Lumetra PSO, a component entity of Lumetra Healthcare Solutions, PSO number P0033, to voluntarily relinquish its status as a PSO. Accordingly, Lumetra PSO, a component entity of Lumetra Healthcare Solutions, was delisted effective at 12 Midnight ET (2400) on December 7, 2010. More information on PSOs can be obtained through AHRQ's P50 Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: January 28, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–2912 Filed 2–10–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Delisting From Community Medical Foundation for Patient Safety

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: Community Medical Foundation for Patient Safety: AHRQ has accepted a notification of voluntary relinquishment from Community Medical Foundation for Patient Safety, of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41,42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR Part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on December 22, 2010.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from Community Medical Foundation for Patient Safety, PSO number P0029, to voluntarily relinquish its status as a PSO. Accordingly, Community Medical Foundation for Patient Safety was delisted effective at 12 Midnight ET (2400) on December 22, 2010.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: January 28, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–2910 Filed 2–10–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–0026]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Report of Verified Case of Tuberculosis (RVCT), (OMB No.0920–0026 exp. 5/31/2011)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States, an estimated 10 to 15 million people are infected with *Mycobacterium tuberculosis* and about 10% of these persons will develop tuberculosis (TB) disease at some point in their lives. The purpose of this project is to continue ongoing national tuberculosis surveillance using the standardized Report of Verified Case of Tuberculosis (RVCT). Data collected using the RVCT help State and Federal infectious disease officials to assess changes in the diagnosis and treatment of TB, monitor trends in TB epidemiology and outbreaks, and develop strategies to meet the national goal of TB elimination.

CDC currently conducts and maintains the national surveillance system pursuant to the provisions of section 301(a) of the Public Service Act [42 U.S.C. 241] and section 306 of the Public Service Act [42 U.S.C. 241(a)]. Data are collected by 60 reporting areas (the 50 States, the District of Columbia, New York City, Puerto Rico, and 7 jurisdictions in the Pacific and Caribbean). The last major revision of the RVCT data collection instrument was approved in 2008, in consultation with CDC's Division of Tuberculosis Elimination (DTBE), State and local health departments, and partner organizations including the National TB Controllers Association, the Council for State and Territorial Epidemiologists, and the Advisory Committee for the Elimination of Tuberculosis. No revisions to the RVCT are proposed in this data collection extension request.

CDC publishes an annual report using RVCT data to summarize national TB statistics and also periodically conducts special analyses for publication to further describe and interpret national TB data. These data assist in public health planning, evaluation, and resource allocation. Reporting areas also review and analyze their RVCT data to monitor local TB trends, evaluate program success, and focus resources to eliminate TB. No other Federal agency collects this type of national TB data. In addition to providing technical assistance on the use of RVCT, CDC provides technical support for reporting software.

In this request, CDC is requesting approval for approximately 6,720 burden hours, an estimated decrease of 1,330 hours. This decrease is due to having fewer TB cases in the United States as we continue progress towards TB elimination. There is no cost to respondents except for their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Types of respondents	Number of respondents	Number of responses per respondent	Average burden response (in hours)	Total burden (in hours)
Local, State, and territorial health departments	60	192	35/60	6,720
Total				6,720

Dated: February 4, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–3079 Filed 2–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11CC]

Proposed Data Collections Submitted for Public Comment and Recommendations

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Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Development and Evaluation of Eagle Books and Youth Eagle Books for American Indians and Alaska Natives (AI/ANs)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The development of effective diabetes prevention programs targeting AI/AN youth is a compelling priority in education and public health. AI/ANs develop type 2 diabetes at younger ages, experience more years of disease burden and have a high probability of developing diabetes-related complications. However, research shows that type 2 diabetes can be prevented or delayed with healthy foods, moderate physical activity, and social support. A number of health

communication products have been developed specifically for AI/AN youth. These include the Eagle Books, the Youth Books, and the Diabetes Education in Tribal Schools (DETS) curriculum.

The Eagle Books are a series of four books that promote physical activity, eating healthy foods, learning from elders about health, and preventing type 2 diabetes. Almost 3 million copies of the Eagle Books have been distributed. The Eagle Books have been incorporated into the lesson plans for the Kindergarten (K) through fourth grades of the DETS curriculum, "Health is Life in Balance." Led by NIH and guided by Tribal consultation, the project engaged eight Tribal Colleges and Universities, CDC, and IHS to develop culturally-grounded, scientifically sound lessons to promote awareness about diabetes and lifestyle adaptations that can help prevent type 2 diabetes. CDC is currently developing additional books for Native American youth ages nine to thirteen (the "Youth Books").

CDC plans to conduct a descriptive evaluation of the Eagle Books and the DETS curriculum, as recommended by the Indian Health Service Tribal Leaders Diabetes Committee (TLDC), the CDC Diabetes Council (sponsored by the National Association of Chronic Disease Directors), and NDWP staff. Information will be collected using ethnographic case study methodology in selected AI/AN communities that currently use the Eagle Books as well as the DETS curriculum.

Data collection will involve discussion groups and interviews conducted during site visits to 12 American Indian communities over three years. On average, information collection will occur in four communities per year and will involve 33 respondents per community. Each site visit will consist of: (i) Interviews with up to 3 community health representatives (*e.g.,* health department representatives, community health workers, Tribal council members, *etc.*); (ii) Interviews with up to 2 school administrators from a local elementary school and a middle school; (iii) One discussion (focus) group with teachers from a local elementary school and one discussion group with teachers from a local middle school; (iv) Two discussion (focus) groups with children: One group with younger children (grades K–1) and one group with older children (grades 2–4); (v) Two discussion (focus) groups with parents: One group with parents of younger children and one group with parents of older children; and (vi) Observational tours of the community.

During the site visits, respondents will be asked to provide general feedback about the Eagle Books and how the Eagle Books have affected knowledge, attitudes, and behaviors about healthy eating and physical activity. In addition, selected respondents will be asked about how the planned Youth Books could be, or have been, incorporated into or support the DETS curriculum. Community health representatives will be asked about local diabetes prevention efforts and how Eagle Books and the DETS curriculum have or could support these efforts. De-identified information will be collected and analyzed by staff from CDC's NDWP, with the assistance of a data collection contractor.

Findings will be used to enhance current and future community outreach and technical assistance efforts designed to promote sustainability of Eagle Books health messages and guide incorporation of the Youth Books into the DETS curriculum middle school lessons. Findings will also be used to identify "best practices" with regard to implementation and use of the Eagle Books and DETS, such as school and community engagement in Eagle Books and DETS, dissemination of Eagle Books and DETS health messages beyond the classroom, and policy or environmental changes made in response to Eagle Books and DETS health messages.

Participation is voluntary. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Community Health Representatives	Interview Guide for Community Health Representatives.	12	1	1	12
Administrators	Interview Guide for Administrators Grades K–4.	4	1	1	4
	Interview Guide for Administrators Grades 5–8.	4	1	1	4
Teachers	Discussion Guide for Teachers Grades K–4.	16	1	75/60	20
	Discussion Guide for Teachers Grades 5–8.	16	1	75/60	20
Parents	Discussion Guide for Parents Grades K–4.	48	1	1	48
Children	Discussion Guide for Children Grades K–1.	16	1	45/60	12
	Discussion Guide for Children Grades 2–3–4.	16	1	45/60	12
Total					132

Dated: February 7, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–3084 Filed 2–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0234]

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 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Ambulatory Medical Care Survey (NAMCS) (OMB No. 0920–0234 exp. 07/31/2012)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the utilization of health care provided by nonfederal office-based physicians in the United States. This revision is to notify the public of significant changes proposed for NAMCS for the 2011–2013 survey period. A three-year clearance is requested.

NAMCS was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. The purpose of NAMCS, a voluntary survey, is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physician offices and hospital outpatient and emergency departments. The NAMCS target universe consists of all office visits made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care. In 2006, physicians and mid-level providers (i.e., nurse practitioners, physician assistants, and nurse midwives) practicing in community health centers (CHCs) were added to the NAMCS sample, and these data will continue to be collected. NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics, reason(s) for visit, provider diagnoses, diagnostic services, medications, and visit disposition.

The President's fiscal year 2011 budget requests that Congress consider a budget increase for this survey for 2011. If the budget increase is approved by Congress, an increase in the sample size of approximately 1,000 physicians and 30,000 visit records is requested. NCHS is also increasing the sample by 500 physicians funded through the Patient Protection and Affordable Care Act (ACT) of 2010. Currently NAMCS produces national and regional estimates. These increases will greatly improve the ability to track providers' practice patterns, including their adoption and meaningful use of health information technology (HIT).

A supplemental mail survey on the adoption and use of electronic medical records (EMRs) in physician offices was added to NAMCS in 2008, and will continue. These data were requested by the Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services, to measure progress toward goals for EMR adoption. The mail survey will collect information on characteristics of physician practices and the capabilities of EMRs used in those practices. To complement the EMR mail survey, NCHS plans to introduce a provider-based mail survey to assess physician workflow before and after EMR implementation. The EMR workflow mail survey is also sponsored by ONC and will evaluate the progress of meeting the President's goal for most Americans to have access to an interoperable electronic health record by 2014.

Scheduled to begin in 2012, a proposed asthma supplement will be administered to primary care physicians, physicians likely to see asthma patients, and all CHC providers. This supplement will provide a more accurate picture of the uptake and implementation of specific asthma management guidelines. Also beginning in 2012, questions are being added to the NAMCS induction form to collect information on the frequency of referrals and use of complementary and alternative medicine (CAM) by conventional providers. These questions will show the extent to which conventional providers are integrating CAM into their treatment plans.

In 2011, NAMCS will include an additional sample of 300 physicians to pretest the asthma supplement, CAM questions, and computerized assisted interviewing instruments that will mimic current NAMCS forms. If the pretest is successful, NCHS will add the new CAM items, asthma supplement, and computerized instruments for data collection beginning in 2012.

Users of NAMCS data include, but are not limited to, Congressional offices, Federal agencies, State and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners.

There is no cost to respondents other than their time to participate. The total estimated annualized burden hours are 12,179.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Hours per response
Core NAMCS:				
Office-based physicians/CHC providers ..	Physician Induction Interview (NAMCS–1)	5,012	1	28/60
Community Health Center Directors	Community Health Center Induction Interview (NAMCS–201).	104	1	20/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Hours per response
Office-based physicians/CHC providers/staff.	Patient Record form (NAMCS–30)	1,017	30	11/60
Office/CHC staff	Pulling, re-filing Patient Record form (NAMCS–30).	893	30	1/60
Office-based physicians/CHC providers/staff.	Asthma Supplement	669	1	15/60
Office-based physicians	EMR/EHR Mail Survey	5,460	1	20/60
Office-based physicians	Physician Workflow Survey	2,982	1	20/60
Pretest NAMCS forms:				
Office-based physicians	Physician Induction Interview (NAMCS–1)	100	1	35/60
Office-based physicians	Asthma Supplement	100	1	15/60
Office-based physicians/staff	Patient Record form (NAMCS–30)	100	30	14/60

Dated: February 7, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–3083 Filed 2–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11CB]

Proposed Data Collections Submitted for Public Comment and Recommendations

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Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

SEARCH for Diabetes in Youth Study—New—Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Diabetes is one of the most common chronic diseases among children in the United States. When diabetes strikes during childhood, it is routinely assumed to be type 1, or juvenile-onset, diabetes. Type 1 diabetes (T1D) develops when the body's immune system destroys pancreatic cells that make the hormone insulin that regulates blood sugar. People with type 1 diabetes must have daily insulin injections to survive. In the last two decades, type 2 diabetes (T2D), formerly known as adult-onset diabetes, has been reported among U.S. children and adolescents with increasing frequency. Type 2 diabetes begins when the body develops a resistance to insulin and no longer uses the insulin properly. As the need for insulin rises, the pancreas gradually loses its ability to produce sufficient amounts of insulin to regulate blood sugar.

Reports of increasing frequency of both type 1 and type 2 diabetes in youth have been among the most concerning aspects of the evolving diabetes epidemic. Unfortunately, reliable data on changes over time in the U.S., or even how many children in the U.S. had type 1 or type 2 diabetes, were lacking. In response to this growing public health concern, the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH) funded the SEARCH for Diabetes in Youth Study.

The SEARCH for Diabetes in Youth Study began in 2000 as a multi-center, epidemiological study, conducted in six geographically dispersed Study Centers that reflected the racial and ethnic diversity of the U.S. Phases 1 (2000–2005) and 2 (2005–2010) were designed collaboratively by the research sites to produce estimates of the prevalence and incidence of diabetes among youth age < 20 years, according to diabetes type, age, sex, and race/ethnicity, and to characterize selected acute and chronic complications of diabetes and their risk factors, as well as the quality of life and quality of health care. Phases 1 and 2 of SEARCH have contributed substantially to understanding of the etiologic and clinical dimensions of childhood diabetes that relate to classification of diabetes. However, critical questions remain regarding ongoing trends in incidence of childhood diabetes, as well as the rationale and sustainability of public health surveillance systems for diabetes in youth.

Phase 3 of the SEARCH for Diabetes in Youth Study will build on previous efforts, with some changes to the data collection procedures developed during Phases 1 and 2. Phase 3 brings together major and timely facets of childhood diabetes research: An epidemiologic component that assesses temporal trends in the incidence of diabetes in youth; a pathophysiologic component addressing the natural history of diabetes in youth; a health services research component to evaluate the processes and quality of care for youth with diabetes; and a public health perspective on case classification of diabetes in youth.

As authorized by section 301 of the Public Health Service Act (42 U.S.C. 241), CDC seeks OMB approval to collect de-identified case-level information from SEARCH study sites.

Information will be collected for three years through a data collection contractor, which will serve as the SEARCH study Coordinating Center. Data will be transmitted electronically to the Coordinating Center through a secure, dedicated Web site. Information can be entered and transmitted at any time. The information collection has three components:

The Registry Study will collect information on newly diagnosed incident diabetes cases in youth age < 20 years. CDC estimates that each clinical site will identify and register an average of 255 cases per year. The items collected for each case include an Extended Core, Medication Inventory, Inpatient Survey, Specimen Collection (Registry version), and Physical Exam (Registry version). The total estimated annualized burden for this information collection is 744 hours.

The Cohort Study is a longitudinal research study about SEARCH cases whose diabetes was incident in 2002 or later. CDC estimates that each clinical site will conduct follow-up on an average of 142 cases per year. The items collected for each case include a Health Questionnaire (Youth version), an additional Health Questionnaire (Parent version), CES—Depression, Medical Record Validation, Quality of Care, Peds QL, SEARCH MNSI Neuropathy, Diabetes Eating Survey, Low Blood Sugar Survey, Supplemental Survey, Tanner Stage, Retinal Photo, Family Conflict Survey, Pediatric Quality of Life Scale, Physical Exam, and Specimen Collection.

Information will also be collected for the purpose of monitoring unanticipated occurrences and conditions. CDC estimates that each site will report an average of 13 unanticipated occurrences per year.

Respondents will be the five study sites funded for SEARCH Phase 3. Participation in the data collection is required for the study sites, but participation in the SEARCH study is voluntary for individuals who are followed at those sites. The estimated annualized burden per study site is 426.4 hours. The total estimated annualized burden for all sites is 2,132 hours.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response	Total burden (in hours)
SEARCH Clinical Sites (Registry Study).	Extended Core	5	255	10/60	213
	Medication Inventory			5/60	106
	Inpatient Survey			10/60	213
	Specimen Collection (Registry)			5/60	106
	Physical Exam (Registry)			5/60	106
SEARCH Clinical Sites (Cohort Study).	Health Questionnaire—Youth	5	142	15/60	178
	Health Questionnaire—Parent			15/60	178
	CES–Depression			4/60	47
	Medical Record Validation			10/60	118
	Quality of Care			13/60	154
	Peds QL			5/60	59
	SEARCH MNSI Neuropathy			5/60	59
	Diabetes Eating Survey			5/60	59
	Low Blood Sugar Survey			5/60	59
	Supplemental			10/60	118
	Tanner Stage			5/60	59
	Retinal Photo			5/60	59
	Family Conflict			5/60	59
	Pediatric Diabetes QOL Scale			5/60	59
	Physical Exam			5/60	59
	Specimen Collection			5/60	59
SEARCH Clinical Sites (Monitoring)	Unanticipated Occurrence/Condition Reporting Form.	5	13	5/60	5
Total					2,132

Dated: February 7, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–3081 Filed 2–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11CD]

Proposed Data Collections Submitted for Public Comment and Recommendations

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Proposed Project

Tourette Syndrome National Education and Outreach Program—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This program will collect program evaluation data from participants of educational workshops and recipients of educational resources on Tourette Syndrome (TS) conducted by the Tourette Syndrome Association in a cooperative agreement with the CDC.

TS is an inherited, neurobiological movement disorder characterized by involuntary motor and vocal tics that typically manifest during childhood. The exact number of people with TS is unknown. Data from the National Survey of Children's Health 2007 resulted in an estimate that 3 out of every 1,000 U.S. children (about 148,000) 6 through 17 years of age had been diagnosed with TS. Higher prevalence estimates obtained from community studies likely mean that there are a significant number of individuals who have TS, but who have not been diagnosed. TS is three to four times more common among males than females.

It is estimated that tens of thousands or Americans with TS either go undiagnosed or the clinical care they do receive is inadequate. There is no known cure. The disorder may express itself with mild symptoms for some, and severe symptoms for others. Depending on the severity and duration, tic symptoms may also be diagnosed as chronic motor or vocal tic disorder, transient tic disorder, and tic disorder not otherwise specified. TS is associated with a high rate of co-morbid conditions.

There is a lack of accurate treatment information among the medical community as well as the general public, and a limited number of expert physicians—all resulting in significant under-diagnosis, misdiagnosis, and inadequate treatment with scant follow-up care. Children also meet with stigma and inadequate responses in educational settings, limiting their educational and social success.

To address these issues, the Tourette Syndrome Association has developed educational workshops and materials to improve the recognition and awareness of TS diagnosis, treatment, co-occurring conditions, and quality of life for those impacted by TS. Health education programs have been developed for 3 groups of audiences: Health professionals, education professionals, and people with TS and their families. The format includes general education programs for the 3 groups, as well as two more in-depth medical training programs for physicians on TS and on the Comprehensive Behavioral Intervention for Tics (CBIT) treatment. In addition, a range of professional health education materials in various formats have been developed as educational resources and will be disseminated.

CDC requests OMB approval to collect program evaluation information from workshop participants and recipients of educational materials over a three-year period. Participants of the workshops and recipients of educational resources will be completing program evaluation forms to provide information on whether the workshop or resource met the educational goals. The information will be used to improve future workshops.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
Health professionals	Medical Education Program Evaluation	1,000	1	2/60	33
Teachers/Educators	Education Program Evaluation	1,000	1	2/60	33
Public	Family/Public Education Program Evaluation.	200	1	2/60	7
Public	Family/Public Medical Program Evaluation.	200	1	2/60	7
Health professionals	CBIT Education Program Evaluation	500	1	2/60	17
Health professionals	CBIT pre-post test	500	2	3/60	50
Health professionals	Physician Retreat pre-post test	50	2	3/60	5
Health professionals	Physician Training Retreat follow up	30	1	2/60	1
Health professionals	CBIT Program 3 month follow-up	300	1	1/60	5
Health professionals	CBIT Online Evaluation	50	1	1/60	1
Teachers/Educators	Education Resource Dissemination	210	1	2/60	7
Public	Family Resource Dissemination	200	1	2/60	7
Health professionals	Medical Resource Dissemination	210	1	2/60	7
Total					180

Dated: February 7, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–3080 Filed 2–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347)

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS) announces a public meeting for receiving comments from the public on implementing the provisions of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347). The Federal government is developing an implementation plan, and comments from the public will assist in this process by gaining perspectives from interested parties on ways to meet the Act's requirements.

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II. Matters To Be Discussed
III. Transcripts

Date and Time: March 3, 2011, 9 a.m.–4:45 p.m., Eastern Time. Please note that public comments may end before the time indicated, following the last call for comments. Members of the public who wish to provide public comments should plan to attend the meeting at the start time listed.

Addresses: Jacob K. Javits Federal Building, 26 Federal Plaza, Broadway entrance, 6th Floor, Conference Room A/B, New York, New York 10278.

Status: The meeting is open to the public, limited only by the space available. The meeting space accommodates approximately 300 people. In addition, there will be an audio conference setup for those who cannot attend in person. The conference line will accommodate up to 300 callers. The USA toll-free dial-in number is 800–619–8873; pass code 8693287. Additionally, there is no registration fee to attend this public meeting.

Security Considerations: Due to mandatory security clearance procedures at the Jacob K. Javits Federal Building, in-person attendees must present valid government-issued picture identification to security personnel upon entering the building and go through an airport-type security check.

Non-U.S. citizens are encouraged to participate in the audio conferencing due to the extra clearance involved with in-person attendance. To attend in-person, a non-U.S. citizen will have to call or send an e-mail before February 16, 2011, to the contact person in this Notice, and provide passport information. If clearance is received, you will be notified; otherwise, you will not be able to attend the meeting in-person.

Speaker Registration: Individuals wishing to speak during the meeting may sign up on the speaker registration list which will be available at the meeting site beginning at 8:30 a.m., and during the meeting.

Agenda: The meeting will begin with a brief introduction by Federal officials, followed by presentations from attendees who register to speak. Each speaker will be limited to five minutes in order to maximize the number of presentations during the meeting. If all registered presentations are made before the end time, there will be an open session to receive comments from anyone who has not signed up on the speaker registration list who may wish to speak. Open session comments will also be limited to five minutes per person. After the last speaker or at 4:45 p.m., whichever occurs first, the meeting will be adjourned.

Contact Person for More Information: Roy Fleming, Sc.D., NIOSH, CDC, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, Toll free: 1–866–426–3673, e-mail: *nioshdocket@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The James Zadroga 9/11 Health and Compensation Act of 2010 established a program known as the World Trade Center (WTC) Health Program within HHS. The program shall be administered by the WTC Program Administrator; the Act includes:

(1) *Medical Monitoring for Responders*—Medical monitoring, including clinical examinations and long-term health monitoring and analysis for enrolled WTC responders who were likely to have been exposed to airborne toxins that were released, or to other hazards, as a result of the September 11, 2001, terrorist attacks.

(2) *Initial Health Evaluation for Survivors*—An initial health evaluation, including an evaluation to determine eligibility for follow-up monitoring and treatment.

(3) *Follow-up Monitoring and Treatment for WTC–Related Health Conditions for Responders and Survivors*—Provision of follow-up monitoring and treatment and payment for all medically necessary health and mental health care expenses of an individual with respect to a WTC-related health condition (including necessary prescription drugs).

(4) *Outreach*—Establishment of an education and outreach program to potentially eligible individuals concerning the benefits under this title.

(5) *Clinical Data Collection and Analysis*—Collection and analysis of health and mental health data relating to individuals receiving monitoring or treatment benefits in a uniform manner in collaboration with the collection of epidemiological data.

(6) *Research on Health Conditions*—Establishment of a research program on health conditions resulting from the September 11, 2001, terrorist attacks.

A full copy of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347) is available in NIOSH Docket #226, at: *http://www.cdc.gov/niosh/docket/.*

II. Matters To Be Discussed

Input from the public is sought on any of the provisions of the James Zadroga 9/11 Health and Compensation Act of 2010. The Federal government is developing an implementation plan, and comments from the public will assist in this process by gaining perspectives from interested parties on ways to meet the Act's requirements.

III. Transcripts

Transcripts will be prepared and posted to NIOSH Docket #226 within 30 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted; and (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make

public comments. If individuals in making a statement reveal personal information (*e.g.,* medical information) about themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and if deemed appropriate, will redact such information. Disclosures of information concerning third parties will be redacted.

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: February 7, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2011–3089 Filed 2–10–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–222, CMS–1771, CMS–10008, CMS–10368, and CMS–R–21]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections 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.

1. *Type of Information Collection Request:* Extension of currently approved collection; *Title of Information Collection:* Independent Rural Health Center/Freestanding Federally Qualified Health Center Cost Report and Supporting Regulations 42 CFR 413.20 and 42 CFR 413.24; Use: Providers of service in the Medicare program are required to submit annual information to achieve reimbursement for health care services rendered to Medicare beneficiaries. The Form CMS–222 cost report is needed to determine the amount of reasonable cost due to the providers for furnishing medical services to Medicare beneficiaries; *Form Number:* CMS–222 (OMB# 0938–0107); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 5812; *Total Annual Responses:* 5812; *Total Annual Hours:* 290,600.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Attending Physicians Statement and Documentation of Medicare Emergency and Supporting Regulations in 42 CFR 424.103; *Use:* 42 CFR 424.103(b) requires that before a nonparticipating hospital may be paid for emergency services rendered to a Medicare beneficiary, a statement must be submitted that is sufficiently comprehensive to support that an emergency existed. Form CMS–1771 contains a series of questions relating to the medical necessity of the emergency. The attending physician must attest that the hospitalization was required under the regulatory emergency definition (42 CFR 424.101) and give clinical documentation to support the claim. *Form Number:* CMS–1771 (OMB# 0938–0023); *Frequency:* Yearly; *Affected Public:* Private sector—business or other for-profit and not-for-profit institutions; *Number of Respondents:* 100; *Total Annual Responses:* 200; *Total Annual Hours:* 50.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Process and Information Required to Determine Eligibility of Drugs, Biologicals, and Radiopharmaceutical Agents for Transitional Pass-Through Status Under the Hospital Outpatient Prospective Payment System (OPPS); *Use:* Section 1833(t)(6) of the Social Security Act provides for temporary additional payments or "transitional pass-through payments" for certain drugs and biological agents. Interested parties such as hospitals, pharmaceutical companies, and physicians can apply for transitional pass-through payment for drugs and biologicals used with services covered under the OPPS. CMS uses this information to determine if the criteria for making a transitional pass-through payment are met and if an interim Healthcare Common Procedure Coding System (HCPCS) code for a new drug or biological is necessary. *Form Number:* CMS–10008 (OMB#: 0938–0802); *Frequency:* Once; *Affected Public:* Private sector—business or other for-profit; *Number of Respondents:* 30; *Total Annual Responses:* 480; Total Annual Hours: 480.

4. *Type of Information Collection Request:* New collection (request for a new OMB control number); *Title of Information Collection:* Dental Action Plan Template for Medicaid and CHIP Programs; *Form No.:* CMS–10368 (OMB#: 0938–NEW); *Use:* CMS is responsible for administering the Federal Medicaid program and the Children's Health Insurance Program (CHIP). As part of the Federal Medicaid program, CMS oversees the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit to assure that all requirements are met. The provision of dental services to EPSDT-eligible individuals is required under section 1905(r)(3) of the Social Security Act. In addition, section 1902(a)(43)(D)(iii) requires that CMS collect information on dental services furnished to eligible individuals. Section 501(e) of CHIPRA imposed new data reporting requirements for the CHIP program by requiring certain dental data to be reported in 2011 on the CHIP annual report. Dental data for CHIP is unavailable as the requirement to report this data is new for CHIP programs. CMS intends to use the information provided in the template to help inform us of the States activities undertaken to achieve the national oral health goals for Medicaid and CHIP. CMS will use the information to routinely follow-up with States on the achievement of their goals and activities and will share that information with other States; *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 69; *Total Annual Responses:* 69; *Total Annual Hours:* 4,485. (For policy questions regarding this collection contact Cindy Ruff at 410–786–5916. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Withholding Medicare Payments to Recover Medicaid Overpayments and Supporting Regulations in 42 CFR

447.31; *Form No.:* CMS–R–21 (OMB#: 0938–0287); *Use:* Section 2104 of the Omnibus Reconciliation Act of 1981 (Pub. L. 97–35) provides CMS with the authority to withhold Federal Medicare payments to recover Medicaid overpayments that the Medicaid State Agency has been unable to recover. When the CMS Regional Office (RO) receives an overpayment case from a State Agency, the case file is examined to determine whether the conditions for withholding Medicare payments have been met. If the RO determines the case is appropriate for withholding Medicare payments, the RO will contact the institution's intermediary or individual's carrier to determine the amount of Medicare payments to which the entity would otherwise be entitled. The RO will then give notice to the intermediary/carrier to withhold the entity's Medicare payment; *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 54; *Total Annual Responses:* 27; *Total Annual Hours:* 81. (For policy questions regarding this collection contact Rory Howe at 410–786–4878. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *April 12, 2011:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–3057 Filed 2–10–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–437, CMS–10358 and CMS–10360]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections 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 function; (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.

1. *Type of Information Collection Request:* Extension of currently approved collection; *Title of Information Collection:* Psychiatric Unit Criteria Work Sheet and Supporting Regulations 412.25 and 412.27; *Use:* A limited number of hospitals and special hospital units are excluded from the Medicare Prospective Payment System (PPS) which determines Medicare payment for operating costs and capital-related costs of inpatient hospital services. 42 CFR 412.25 and 42 CFR 412.27 describes the criteria under which these facilities are excluded. Excluded units are paid on the basis of reasonable costs subject to target rate ceilings (provided for by Section 1886(b) of the Social Security Act). State survey agencies (SAs) are required to conduct initial onsite surveys of these units to verify that they continue to meet PPS-exclusion criteria. CMS proposes to continue to use the Criteria Worksheet, Forms CMS–437 for verifying first-time exclusions from the PPS, for complaint surveys, for its annual 5 percent validation sample, and for facility self-attestation. These forms are related to the survey and certification and Medicare approval of the PPS-excluded units; *Form Number:* CMS–437 (OMB#: 0938–0358); *Frequency:* Annually; *Affected Public:* Private sector businesses or other for-profits; *Number of Respondents:* 1,333; *Total Annual Responses:* 1,333; *Total Annual Hours:* 333. (For policy questions regarding this collection contact Kelley Leonette at 410–786–6664. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* MMIS APD Template for Use by States When Implementing the Mandatory National Correct Coding Initiative in Medicaid, SMD Letter #10–017 dated September 1, 2010. *Use;* The Patient Protection and Affordable Care Act (Affordable Care Act) requires implementation of Section 6507, Mandatory State Use of National Correct Coding Initiative. A State Medicaid Director letter, #10–017 dated September 1, 2010 was published with implementation requirements for provision 6507. Within this SMD letter, CMS states that a Medicaid Management Information System (MMIS) Advanced Planning Document (APD) template is required for States to request Federal financial participation (FFP) funding for implementing the provision and is also the tool for requesting deactivation of edits, due to direct conflicts with State laws, regulations, administrative rules, or payment policies. CMS has developed an MMIS–APD template specific to NCCI for State convenience. The MMIS APD template supporting implementation of the National Correct Coding Initiative in Medicaid will be submitted by States to the Regional Offices for review and to CMS Central Office for review and approval. The information requested on the MMIS APD template for NCCI will be used to determine and approve FFP to States. *Form Number:* CMS–10358 (OMB#: 0938–New); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 55; *Total Annual Responses:* 56; *Total Annual Hours:* 56. (For policy questions regarding this collection contact Richard Friedman at 410–786–4451. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of*

Information Collection: Consumer Research on Public Reporting of Hospital Outpatient Measures; *Use:* One of the primary missions of CMS is to improve the quality and efficiency of care in the Fee-for-Service (FFS) program. One of the several vehicles used for this mission is the public reporting of quality, efficiency and cost information about hospital care on the *Hospital Compare* Web site. This vehicle also serves to provide Medicare beneficiaries and other consumers with the type of data needed to make informed decisions about which providers to use for their care. In 2001, the Department of Health and Human Services (DHHS) announced the *Quality Initiative* to ensure the quality of health care for all Americans through accountability and public disclosure. The goals of the initiative are to empower consumers with quality-of-care information so they can make more informed decisions about their health care and to stimulate and support providers and clinicians to improve the quality of health care. As part of the DHHS Transparency Initiative on Quality Reporting, CMS plans to add new patient safety measures in the areas of hospital acquired conditions and healthcare associated infections, to the Hospital Compare Web site in 2011. CMS also intends to begin utilizing displays of composite measures summarizing both process and outcome measures. This information collection request covers consumer research on displays, labels, and explanatory language to insure that the website is understood by viewers in a manner consistent with CMS's intended communication message. *Form Number:* CMS–10360 (OMB#: 0938–NEW); *Frequency:* Once; *Affected Public:* Individuals and Households; *Number of Respondents:* 248; *Total Annual Responses:* 248; *Total Annual Hours:* 241. (For policy questions regarding this collection contact David Miranda at 410–786–7819. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *March 14, 2011.* OMB, Office of Information and Regulatory Affairs. *Attention:* CMS Desk Officer. *Fax Number:* (202) 395–6974. *E-mail:* OIRA_submission@omb.eop.gov.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–3056 Filed 2–10–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Program Information Report.

OMB No. 0980–0017.

Description: The Office of Head Start within the Administration for Children and Families, United States Department of Health and Human Services, is proposing to renew authority to collect information using the Head Start Program Information Report (PIR). The PIR provides information about Head Start and Early Head Start services received by the children and families enrolled in Head Start programs. The information collected in the PIR is used to inform the public about these programs and to make periodic reports to Congress about the status of children in Head Start programs as required by the Head Start Act.

Respondents: Head Start and Early Head Start program grant recipients.

Respondents: Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Program Information Report	2,690	1	4	10,760

Estimated Total Annual Burden Hours: 10,760.

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 Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

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.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 2011–3060 Filed 2–10–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2010–N–0066]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Human Tissue Intended for Transplantation" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Johnny Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–7651, *Juanmanuel.Vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 2, 2010 (75 FR 45127), 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 0910–0302. 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: February 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3031 Filed 2–10–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0600]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Animal Drug User Fee Cover Sheet, Form 3546

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 March 14, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0539. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Johnny Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@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.

Animal Drug User Fee Cover Sheet; FDA Form 3546—(OMB Control Number 0910–0539)—Extension

Under section 740 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379j-12), as amended by the Animal Drug User Fee Act (ADUFA), FDA has the authority to assess and collect for certain animal drug user fees. Because the submission of user fees concurrently with applications and supplements is required, review of an application cannot begin until the fee is submitted. The types of fees that require a cover sheet are certain animal drug application fees and certain supplemental animal drug application fees. The cover sheet (FDA Form 3546) is designed to provide the minimum necessary information to determine whether a fee is required for the review of an application or supplement, to determine the amount of the fee required, and to assure that each animal drug user fee payment and each animal drug application for which payment is made is appropriately linked to the payment that is made. The form, when completed electronically, will result in the generation of a unique payment identification number used in tracking the payment. FDA will use the information collected to initiate administrative screening of new animal drug applications and supplements to determine if payment has been received.

In the **Federal Register** of November 29, 2010 (75 FR 73103), 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]

FD&C Act Section amended by ADUFA	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
740(a)(1) FDA Form 3546 (Cover Sheet)	76	1	76	1	76
Total					76

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to this collection of information are new animal drug applicants or manufacturers. Based on FDA's database system, there are an estimated 140 manufacturers of products or sponsors of new animal drugs potentially subject to ADUFA. However, not all manufacturers or sponsors will have any submissions in a given year and some may have multiple submissions. The total number of annual responses is based on the

number of submissions received by FDA in fiscal year 2008. The estimated hours per response are based on past FDA experience with the various submissions. The hours per response are based on the average of these estimates.

Dated: February 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–3167 Filed 2–10–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Cancer Biomedical Informatics Grid® (caBIG®) Support Service Provider (SSP) Program (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: cancer Biomedical Informatics Grid ® (caBIG ®) Support Service Provider (SSP) Program (NCI). *Type of Information Collection Request:* Existing Collection in Use Without an OMB Number. *Need and Use of Information Collection:* The NCI Center for Biomedical Informatics and Information Technology (CBIIT) launched the enterprise phase of the caBIG ® initiative in early 2007 with an emphasis on widespread institutional adoption of the program and tools. This emphasis on adoption has generated an expanding community with diverse needs for support, which are met through the resources available through the caBIG ® Enterprise Support Network (ESN), including the caBIG ® Support Service Provider (SSP) Program. The caBIG ® SSPs provide caBIG ® end-users with the freedom to match what caBIG ® has to offer to their unique organizational goals and needs, so having this customized support option available is critically important to advancing the goals of the caBIG ® program. caBIG ® SSP applicants are evaluated against well-defined criteria published in the SSP Program Announcement and must successfully demonstrate that they have the technical capabilities, staffing and scalability, geographic coverage (when applicable), and the domain expertise in biomedicine to effectively serve caBIG ® users. The information submitted by SSP applicants enables NCI to determine whether such applicants are qualified to enter into trademark license negotiations with NCI to use the caBIG ® trademarks in connection with their services and become designated as caBIG ® SSPs. Thus, the collection of information from SSP applicants is critical to both ensuring that the goals and objectives of the caBIG ® program will be maintained and furthered by the organizations designated as SSPs and facilitating NCI's ability to exercise appropriate stewardship of the caBIG ® trademarks. Sections 410 and 411 of the Public Health Service Act (42 U.S.C. 285 and 285a) authorize the collection of the information. *Frequency of Response:* once for the applicants. caBIG ® SSP applications are accepted on a rolling basis and reviewed several times a year. *Affected Public:* Private sector including Business or other for-profits and not-for-profit organizations and institutions. *Type of Respondents:* Technical representatives of commercial, academic or not-for-profit organizations. The annual reporting burden is estimated at 360 hours.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

A.12—1 ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Commercial Organizations	14	1	1440/60 (24 hours)	336
Nonprofit Organizations	1	1	1440/60 (24 hours)	24
Totals	15			360

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact John Speakman, NCI CBIIT Chief Program Officer, Center for Biomedical Informatics and Information Technology, National Cancer Institute, NIH, DHHS, 2115 E. Jefferson Street, Suite 6000, Rockville, MD 20892 or call non-toll-free number 301–451–8786 or e-mail your request, including your address to: *john.speakman@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: February 4, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–3144 Filed 2–10–11; 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, Small Business: Healthcare Delivery and Methodologies.

Date: March 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel, 1600 King Street, Alexandria, VA 22314.

Contact Person: Delia Olufokunbi Sam, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurophysiology.

Date: March 3, 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: Carole L Jelsema, PhD, Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Risk Prevention and Behavior Health.

Date: March 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Tysons Corner, 1960–A Chain Bridge Road, McLean, VA 22102.

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Risk Prevention and Health Behavior.

Date: March 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Tysons Corner, 1960–A Chain Bridge Road, McLean, VA 22102.

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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Language and Communication.

Date: March 4, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: 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, Quick Trial on Imaging and Image-Guided Intervention.

Date: March 10, 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 (Virtual Meeting).

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Vascular Hematology.

Date: March 11, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–1241, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: March 22–23, 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: Kathryn M. Koeller, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Computational Biology, Image Processing and Data Mining.

Date: March 22, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–435–1024, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Integrative Neuroscience.

Date: March 22–23, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lynn E. Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cell Biology and Molecular Imaging.

Date: March 23, 2011.

Time: 11 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Maria DeBernardi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Infectious Diseases and Microbiology.

Date: March 24–25, 2011.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander D. Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Respiratory Sciences.

Date: March 24–25, 2011.

Time: 9 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: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diabetes, Obesity and Endocrine Disorders.

Date: March 24–25, 2011.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Krish Krishnan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@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: February 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3105 Filed 2–10–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

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 notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group; DCLG.

Date: February 22–23, 2011.

Time: February 22, 2011, 9 a.m. to 5 p.m.

Agenda: Welcome, Challenges to Data Standardization in Research, Data Collection for Research in Clinical Settings, Consent Practices for the Personal Genome Project, Case Studies of Alternative Models to Consent for Research.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: February 23, 2011, 9 a.m. to 5 p.m.

Agenda: NCI Leadership Report, Update on NCI Cooperative Group Transformation, Board Discussion About the Role of Patients in Data Sharing and Impacts on Research Consent Practices.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Benjamin Carollo, MPA, Advocacy Relations Manager, Office Of Advocacy Relations, Building 31, Room 10A30, 31 Center Drive, MSC 2580, National Cancer Institute, NIH, DHHS, Bethesda, MD 20892–2580, 301–496–0307, *CAROLLOB@MAIL.NIH.GOV*.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–3106 Filed 2–10–11; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting; Advisory Council on Historic Preservation

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Meeting.

Summary: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet Thursday, February 17, 2011. The meeting will be held in the Caucus Room of the Russell Senate Office Building at Constitution and Delaware Avenues, NE., Washington, DC at 9 a.m. The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, Federally assisted, and Federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

Call to Order—9 a.m.

I. Chairman's Welcome
II. Swearing-in of New Members III. Chairman's Award
IV. Chairman's Report
V. Executive Director's Report
VI. Native American Activities
  A. HUD Delegation of Tribal Consultation Responsibilities
  B. Native American Advisory Group
  C. Voting Membership on the ACHP for NATHPO D. Tribal Leaders meeting
VII. Panel on Renewable Energy and Historic Preservation
VIII. Sustainability and Historic Preservation Task Force
IX. Preservation Initiatives Committee
  A. America's Great Outdoors Initiative and Historic Preservation
  B. Economic Benefits Study
  C. Legislation
X. Federal Agency Programs Committee
  A. Distance Learning Update
  B. FEMA Gulf Coast Hazard Mitigation Grant Program Work Group Update
  C. Section 106 Update
XI. Communications, Education, and Outreach Committee
  A. Engaging Youth in Historic Preservation
  B. New Directions for ACHP Awards Programs
XII. New Business
XIII. Adjourn

Note: The meetings of the ACHP are open to the public.

If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC 202606–8503, at least seven (7) days prior to the meeting. For further

information: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: February 3, 2011.

John M. Fowler,

Executive Director.

[FR Doc. 2011–2928 Filed 2–10–11; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0006]

Agency Information Collection Activities: Cybersecurity and Communications Technical Assistance Request and Evaluation

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), Office of Emergency Communications (OEC), will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning New Information Collection Request, Technical Assistance Request and Evaluation. DHS previously published this ICR in the **Federal Register** on March 3, 2010, at 75 FR 9608–9609, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until March 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed ICR to the OMB Office of Information and Regulatory Affairs. Comments should be addressed to OMB Desk Officer, DHS Office of Civil Rights and Civil Liberties. Comments must be identified by DHS–2010–0006 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required, contact: DHS/NPPD/CS&C/OEC, Richard Reed, 202–343–1666, *Richard.Reed@dhs.gov*.

SUPPLEMENTARY INFORMATION: OEC was formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* as amended, and is responsible for providing free technical assistance to States, territories, localities, and Tribal agencies. The Technical Assistance Request Form is used to identify the number and type of technical assistance requests from each State and territory. The Technical Assistance Evaluation Form is used by OEC to support quality improvement of its technical assistance services. Registration forms will be submitted electronically. Evaluation forms may be submitted electronically or in paper form.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Technical Assistance Request and Evaluation.

Form: DHS Form 9042, DHS Form 9043.

OMB Number: 1670–NEW.

Frequency: Annual.

Affected Public: State, local, or Tribal government.

Number of Respondents: 350.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 175 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $4,273.50.

Dated: January 20, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–3150 Filed 2–10–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0004]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS), Science and Technology, CyberForensics Electronic Technology Clearinghouse (CyberFETCH) Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS), Science & Technology (S&T) Directorate invites the general public to comment on data collection forms for the CyberForensics Electronic Technology Clearinghouse (CyberFETCH) program. CyberFETCH is responsible for providing a collaborative environment for cyber forensics practitioners from law enforcement, private sector and academia. This clearinghouse will enable its users to share information, best practices and lessons learned within a secure collaborative environment. In order for a user to access this clearinghouse, he/she must complete a registration form to establish a user account. The information collected is used by the DHS S&T CyberFETCH program to determine the authenticity and suitability of the practitioner requesting access. Once approved, users will utilize the collaborative environment to upload documents/resources, exchange information, network with other users, as well as post blogs and comments.

The DHS invites interested persons to comment on the following form and

instructions (hereinafter "Forms Package") for the S&T CyberFETCH: (1) Request a CyberFETCH Account (DHS Form 10073). Interested persons may receive a copy of the Forms Package by contacting the DHS S&T PRA Coordinator. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until April 12, 2011.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2011–0004, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *E-mail: Michael.Bowerbank@dhs.gov.* Please include docket number DHS–2011–0004 in the subject line of the message.
- *Fax:* (202) 254–6171 (Not a toll-free number).
- *Mail:* Science and Technology Directorate, ATTN: Chief Information Office—Michael Bowerbank, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: DHS S&T PRA Coordinator Michael Bowerbank (202) 254–6895 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The information will be collected via the DHS S&T CyberFETCH secure Web site at *http://www.cyberfetch.org/*. The CyberFETCH Web site will only employ secure Web-based technology (*i.e.,* electronic registration form) to collect information from users to both reduce the burden and increase the efficiency of this collection.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(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) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest 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, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Information Collection.

(2) *Title of the Form/Collection:* Science and Technology, CyberForensics Electronic Technology Clearinghouse (CyberFETCH) program.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Department of Homeland Security, Science & Technology Directorate—(1) Request a CyberFETCH Account (DHS Form 10073).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals, consisting of Federal, State and local law enforcement, private sector and academia practitioners. The information collected will be leveraged to determine the authenticity and suitability of the practitioner requesting access. Once approved, users will utilize the collaborative environment to upload documents/resources, exchange information, network with other users, as well as post blogs and comments.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 1000.

b. *An estimate of the time for an average respondent to respond:* .25 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 250 burden hours.

Dated: February 1, 2011.

Tara O'Toole,

Under Secretary for Science and Technology.

[FR Doc. 2011–3168 Filed 2–10–11; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–1020; OMB Control Number: 1625–0108]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0108, Standard Numbering System for Undocumented Vessels. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before March 14, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2010–1020] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by e-mail via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

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

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.*

Additionally, copies are available from: COMMANDANT (CG–611), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND ST, SW., STOP 7101, WASHINGTON, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2010–1020], and must be received by March 14, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2010–1020], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *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 DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type "USCG–2010–1020" in the "Keyword" box. 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 will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice 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–2010–1020" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: USCG–2010–0978.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (75 FR 70938, November 19, 2010) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: Standard Numbering System for Undocumented Vessels.

OMB Control Number: 1625–0108.

Type of Request: Extension of a previously approved collection.

Respondents: Owners of all undocumented vessels propelled by machinery. "Owners" may include individuals or households, non-profit organizations, and small businesses (e.g., liveries that offer recreational vessels for rental by the public) or other for-profit organizations.

Abstract: The Standard Numbering System (SNS) collects information on undocumented vessels and vessel owners operating on waters subject to the jurisdiction of the United States. Federal, State, and local law enforcement agencies use information daily or as warranted from the system for enforcement of boating laws or theft and fraud investigations. Since the September 11, 2001 terrorist attacks on the United States, the need has increased for identification of undocumented vessels to meet port security and other missions to safeguard the homeland.

Forms: None.

Burden Estimate: The estimated burden remains the same at 286,458 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: February 7, 2011.

D.M. Dermanelian,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–3042 Filed 2–10–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the U.S. Customs and Border Protection regulations (19 CFR 111.51(b)), the following Customs broker license and all associated permits are cancelled with prejudice.

Name	License No.	Issuing port
Jaime G. Camarillo.	16569	El Paso.

Dated: February 1, 2011.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2011–3142 Filed 2–10–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

U.S. Customs and Border Protection Trade Symposium 2011: "Working Together To Strengthen Economic Competitiveness"

AGENCY: Customs and Border Protection, DHS.

ACTION: Notice of trade symposium.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) will convene its annual trade symposium, featuring panel discussions involving agency personnel, members of the trade community and other government agencies, on the agency's role in international trade initiatives and programs. This year marks our eleventh year hosting a trade symposium. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

DATES: Wednesday, April 13, 2011 (opening remarks and panel discussions—9:30 a.m.–5 p.m. and open forum with senior management—5:45 p.m.–7:15 p.m.). Thursday, April 14, 2011 (panel discussions—8:30 a.m.–5 p.m.).

ADDRESSES: The CBP Trade Symposium will be held at the Ronald Reagan Building and International Trade Center (RRB) in the Atrium, Atrium Ballroom and Atrium Hall, at 1300 Pennsylvania Avenue, NW., Washington, DC 20004. Upon entry into the RRB, please have a government-issued photo identification to show to the security guard.

FOR FURTHER INFORMATION CONTACT: The Office of Trade Relations at (202) 344–1440, or at *tradeevents@dhs.gov.* To obtain the latest information on the Symposium and to register on-line, visit the CBP Web site at *http://www.cbp.gov.* Requests for special needs should be sent to the Office of Trade Relations at *tradeevents@dhs.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the Trade Symposium and the keynote speakers will be announced at a later date on the CBP Web site. The registration fee is $450.00 per person, and includes all Symposium activities for two full days. Interested parties are requested to register early, as space is limited. Registration will open to the public on or about February 14, 2011. All registrations must be made on-line at the CBP Web site (*http://www.cbp.gov*) and will be confirmed with payment by credit card only. Consideration will be given, on a first come, first served order, based on space availability. Due to the overwhelming interest to attend past Symposiums, each company is requested to limit their company's registrations to no more than three participants, in order to afford equal representation from all members of the international trade community. If a company exceeds the limitation, any additional names submitted for registration will automatically be placed on the waiting list.

As an alternative to on-site attendance, access to live webcasting of the event will be available for a fee of $150.00. This includes two days of broadcast and historical access to recorded sessions for a period of time after the event.

Hotel accommodations have been reserved at the following locations:

- Hilton Alexandria Mark Center, 703.845.1010, $211.00/night *http://www1.hilton.com/en_US/hi/hotel/DCAAHHF-Hilton-Alexandria-Mark-Center-Virginia/index.do,* Group Code: CBP2;
- Crystal City Marriot at Reagan National Airport, 703.413.6535, $299.00/night, *http://www.marriott.com/hotels/travel/WASCC?groupCode=CSTCSTA&app=resvlink&fromDate=4/12/11&toDate=4/15/11;*
- Crystal Gateway Marriot, Arlington, VA, 888.236.2427, $289.00/night, *http://www.marriott.com/hotels/travel/WASGW?groupCode=CABCABA&app=resvlink&fromDate=4/12/11&toDate=4/15/11;*
- Courtyard Arlington Crystal City/Reagan National Airport, 800.321.2211, $249.00/night, *http://www.marriott.com/hotels/travel/wasct?groupCode=cbtcbta&app=resvlink&fromDate=4/12/11&toDate=4/16/11;*
- Courtyard Alexandria, Alexandria, VA, 888.236.2427, $229.00/night *http://www.marriott.com/hotels/travel/WASAL?groupCode=CBTCBTA&app=resvlink&fromDate=4/12/11&toDate=4/15/11;*
- Spring Hill Suites, Alexandria, VA, 888.236.2427, $229.00/night, *http://www.marriott.com/hotels/travel/WASAL?groupCode=CBTCBTA&app=resvlink&fromDate=4/12/11&toDate=4/15/11;*
- Key Bridge Marriot, Arlington, VA, 800.266.9432, $279.00/night, *https://resweb.passkey.com/Resweb.do?mode=welcome_ei_new&eventID=3284002;*
- Residence Inn Arlington Capital View, 800.228.9290, $259.00/night, *http://www.marriott.com/hotels/travel/wasry?groupCode=trytrya&app=resvlink&fromDate=4/12/11&toDate=4/15/11;*
- Renaissance Arlington Capital View Hotel, 800.228.9290, $249.00/night, *http://www.marriott.com/hotels/travel/waspy?groupCode=trstrsa&app=resvlink&fromDate=4/12/11&toDate=4/15/11;*
- Westin Tyson's Corner, Falls Church, VA, 800.937.8461, $211.00/night, *http://www.starwoodmeeting.com/StarGroupsWeb/res?id=1101268705&key=20F8C.*

Reservations must be made directly with the hotel. We encourage you to make your reservations early as the cutoff date for the special rates listed is March 13, 2011.

Dated: February 7, 2011.

Maria Luisa O'Connell,

Senior Advisor for Trade and Public Relations, Office of Trade Relations.

[FR Doc. 2011–3170 Filed 2–10–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5486–N–04]

Notice of Proposed Information Collection for Public Comment on the Online Innovation Submission Form for the Innovation of the Day Project

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of proposed information collection.

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 of 1995, Public Law 104–13 (44 U.S.C. 3506 (c) (2) (A)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 12, 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: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8234, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sarah Gillespie at (202) 402–5843 (this is not a toll-free number). Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Gillespie.

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 that will reduce burden, (*e.g.,* permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Innovation of the Day Project.

OMB Control Number: XXXX-pending.

Description of the need for the information and proposed use: The Online Innovation Submission Form is necessary to collect information for sharing with the public through the Innovation of the Day Project.

"Innovation of the Day" is a new online submission and display platform located on HUD.gov, facilitated through the Office for International and Philanthropic Innovation (IPI) in PD&R at HUD. The simple and intuitive platform is designed to seek out and lift up the best models, practices and systems in the area of housing and community development, from both inside and outside HUD, and expose them to the public through continuous updates to the Innovation of the Day Web site. The submissions will be available to HUD and non-HUD employees to encourage a synergy within and without on these kinds of innovations. HUD employees will connect to the work as they begin to notice, search for and submit innovations from the field and from within HUD to the page. This will create a sense of ownership, awareness and connection to the work in the field and give HUD staff the chance to engage as they may not have previously. Non-HUD individuals will also develop a greater connection to HUD and its work in housing and community development. It will indirectly give some exposure to their own work as they fill out the submission and it is posted.

Members of affected public: Individuals.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

ESTIMATED RESPONDENT BURDEN HOURS AND COSTS

Form	Respondent sample	Number of respondents	Average time to complete (minimum, maximum) in minutes	Frequency	Total burden (hours)
Online Innovation Submission Form	The public	Approx. 2–10 per day.	10 min (5–15 min)	20 days per month.	6–30 hours per month

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: February 3, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2011–3148 Filed 2–10–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–24]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, exceptions were granted to the St. Clair Shores Housing Commission of St. Clair Shores, MI for the purchase and installation, of Ground Fault Circuit Interrupter (GFCI) outlets and electronic

door chimes at the Leisure Manor Apartments I & II, and to the Housing Authority of the City of Columbia, Columbia, SC, for the purchase and installation of door stops, GFCI receptacles, telephone wall communication plates, range outlets, telephone/CATV combo communication wall plates, three-way switches, single pole switches, dryer outlets, door chimes and door viewers at the Dorrah-Randall Phase VI Modernization Project.

FOR FURTHER INFORMATION CONTACT: Donald J. LaVoy, Deputy Assistant Secretary for Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4112, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number); or Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on January 19, 2011, the following exceptions were granted:

1. St. Clair Shores Housing Commission. Upon request of the St. Clair Shores Housing Commission, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Leisure Manor Apartments I & II. The exception was granted by HUD on the basis that the relevant manufactured goods (GFCI outlets and multi-tone electronic chimes) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

2. Housing Authority of the City of Columbia. Upon request of the Housing Authority of the City of Columbia, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Dorrah-Randall Phase VI Modernization Project. The exception was granted by HUD on the basis that the relevant manufactured goods (door stops, GFCI receptacles, telephone wall communication plates, range outlets, telephone/CATV combo communication wall plates, three-way switches, single pole switches, dryer outlets, door chimes and door viewers) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: January 27, 2011.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–3149 Filed 2–10–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R1–ES–2011–0009; 10120–1113–0000–C3]

Nonessential Experimental Populations of Gray Wolves in the Northern Rocky Mountains; Lethal Take of Wolves in the Lolo Elk Management Zone of Idaho; Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft environmental assessment (EA) of the Idaho Department of Fish and Game's (IDFG) proposal to lethally take wolves in the Lolo Elk Management Zone of north-central Idaho in response to impacts on elk populations. IDFG's proposal was submitted under the Endangered Species Act (ESA) and our special regulations under the ESA for the central Idaho and Yellowstone area nonessential experimental populations of gray wolves in the Northern Rocky Mountains. The draft EA describes the environmental effects of two alternatives: (1) The preferred alternative, which would approve the IDFG proposal to reduce the wolf population in the Lolo Elk Management Zone to a minimum of 20 to 30 wolves, in 3 to 5 packs, for a period of 5 years, in response to impacts on elk populations; and (2) a no-action alternative, which would deny the proposal to reduce the wolf population in the Lolo Elk Management Zone. Under the no-action alternative, wolves in the Lolo Elk Management Zone would continue to be managed as a nonessential experimental population and could be removed by the Service or its designated agents when livestock, stock animals, or dogs are killed by wolves.

DATES: To ensure consideration, we must receive your written comments on the draft EA no later than March 14, 2011. Please note that if you are using the Federal eRulemaking Portal (*see* **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date.

ADDRESSES: *Documents:* The draft EA is available electronically at *http://www.fws.gov/idaho/* or *http://www.regulations.gov* (under Docket number FWS–R1–ES–2011–0009). Alternatively, you may request the document by writing to: Idaho State Supervisor, Attn: Lolo Wolf 10(j) proposal, Idaho Fish and Wildlife Office, 1387 South Vinnell Way, Suite 368, Boise, ID 83709–1657.

Comments: Before submitting comments, *see* the Public Availability of Comments section, below, for important information regarding privacy and personal identifying information in your comments. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Idaho Fish and Wildlife Office address. You may submit information by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is FWS–R1–ES–2011–0009. Check the

box that reads "Open for Comment/ Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct document before submitting your comment.

U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R1–ES–2011–0009; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Availability of Comments section below for more details).

FOR FURTHER INFORMATION CONTACT: Brian Kelly, Idaho State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (*see* **ADDRESSES** above), at 208–378–5243; or *brian_t_kelly@fws.gov* (e-mail). Individuals who are hearing impaired or speech impaired may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

We are evaluating whether or not to authorize lethal take of wolves in an ESA-designated nonessential experimental population in the Lolo Elk Management Zone (Lolo Zone) in the State of Idaho. The Lolo Zone is 1 of 29 elk-management zones in Idaho. The proposed action is in response to a proposal from the Idaho Department of Fish and Game (IDFG) to reduce gray wolf predation on the wild elk population in the Lolo Zone for a period of 5 years.

In 1974, Northern Rocky Mountain gray wolves (*Canis lupus irremotus*), as well as three other gray wolf subspecies, were listed as endangered under the authority of the Endangered Species Act of 1973 (ESA; U.S.C. 1531 *et seq.*) (January 4, 1974; 39 FR 1171). In 1978, the List was updated to reflect new taxonomic information related to gray wolf subspecies, and also the fact that all gray wolf subspecies in the coterminous United States and Mexico were threatened or endangered (43 FR 9607).

ESA Amendments of 1982 (Pub. L. 97–304) made significant changes to the ESA, including the creation of section 10(j), which provides for the designation of specific populations of listed species as "experimental." Under previous authorities in the ESA, the U.S. Fish and Wildlife Service (Service) was permitted to reintroduce a listed species into unoccupied portions of its historical range for conservation and recovery purposes. However, in some cases, local opposition to reintroduction efforts from parties concerned about potential restrictions under sections 7 and 9 of the ESA, made reintroductions contentious or even socially unacceptable.

Under ESA section 10(j), a listed species reintroduced outside of its current range—but within its historical range—may be designated, at the discretion of the Secretary of the Interior, as "experimental." This designation increases the Service's flexibility and discretion in managing reintroduced endangered species, because the Service treats experimental populations as threatened species (with a few exceptions) and may promulgate special regulations for threatened species that provide exceptions to the take prohibitions under section 9 of the ESA.

On November 22, 1994, we designated portions of Idaho, Montana, and Wyoming as two nonessential experimental population areas for the gray wolf under section 10(j) of the ESA: The Yellowstone Experimental Population Area (59 FR 60252) and the Central Idaho Experimental Population Area (59 FR 60266). These designations, which are found in the Code of Federal Regulations (CFR) at 50 CFR 17.40(i), assisted us in initiating gray wolf reintroduction projects in central Idaho and in the Greater Yellowstone Area (GYA). At that time, special regulations under section 10(j) allowed, among other things, livestock producers to lethally remove wolves in the act of killing, wounding, or biting livestock, and allowed the Service to lethally remove problem wolves. The 1994 designation did not contemplate removing wolves to protect wild game species.

After being reintroduced to central Idaho in 1995 and 1996 as a nonessential experimental population under section 10(j) of the ESA, wolves achieved biological recovery objectives in 2002. Following biological recovery, the 1994 ESA 10(j) rule was amended in 2005 to give State and Tribal governments a role in gray wolf management under Service-approved wolf management plans and to allow lethal take of wolves in response to "unacceptable impacts" to wild ungulate populations (70 FR 1286). The 10(j) rule was amended again in 2008 to clarify the definition of "unacceptable impact" and the factors the Service must consider when a State or Tribe requests an exception from the take prohibitions of the ESA in response to wolf impacts on wild ungulate populations (73 FR 4720).

Under the 2008 10(j) rule, States or Tribes may lethally take wolves within the experimental population if wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison) as determined by the respective State or Tribe, provided that the State or Tribe prepares a science-based document that: (1) Describes the basis of ungulate population or herd management objectives, which data indicate that the ungulate population or herd is below management objectives, which data indicate that wolves are a major cause of the unacceptable impact to the ungulate population or herd, why wolf removal is a warranted solution to help restore the ungulate population or herd to State or Tribal management objectives, the level and duration of wolf removal being proposed, and how ungulate population or herd response to wolf removal will be measured and control actions adjusted for effectiveness; (2) demonstrates that attempts were and are being made to address other identified major causes of ungulate herd or population declines, or the State or Tribe commits to implement possible remedies or conservation measures in addition to wolf removal; and (3) provides for an opportunity for peer review and public comment on their proposal prior to submitting it to the Service for written concurrence. In conducting peer review, the State or Tribe must: (i) Conduct the peer review process in conformance with the Office of Management and Budget's Final Information Quality Bulletin for Peer Review (70 FR 2664), and include in their proposal an explanation of how the Bulletin's standards were considered and satisfied; and (ii) obtain at least five independent peer reviews from individuals with relevant expertise; these individuals must not be staff employed by the State, Tribal, or Federal agency directly or indirectly involved with predator control or ungulate management in Idaho, Montana, or Wyoming.

Before authorizing lethal removal of wolves in response to "unacceptable" wild ungulate impacts, the Service must determine whether an unacceptable impact to wild ungulate populations or herds has occurred. We also must determine that the proposed lethal removal is science based, will not contribute to reducing the wolf population in the State below 20 breeding pairs and 200 wolves, and will not impede wolf recovery.

Draft Environmental Assessment

We are announcing the availability of a draft Environmental Assessment (EA) that was prepared to evaluate potential environmental effects associated with our authorization or denial of IDFG's proposal to lethally take wolves in the Lolo Zone in an effort to reduce wolf populations to a minimum of 20 to 30 wolves in 3 to 5 packs and reduce predation pressure on the elk population in that zone. A No Action and Preferred Action are described, and the environmental consequences of each alternative are analyzed.

No-Action Alternative (Deny Requested Authorization). Under the No-Action Alternative, the Service would deny IDFG's 10(j) proposal to remove wolves in the Lolo Elk Management Zone, and current management direction for wolves would continue. In the Lolo Elk Management Zone, wolves would be managed by the Service or their designated agent and could be removed when livestock, stock animals, or dogs are killed by wolves as currently provided for in the 2008 10(j) rule (73 FR 4720, January 28, 2008). The No-Action Alternative management strategy would not include lethal removal of wolves in response to predation on wild ungulate populations.

The No-Action Alternative would continue to allow management activities by State and Tribal governments to address major causes of elk declines other than wolf predation. Past management activities have included changes in elk hunting seasons and harvest strategies, changes in black bear and mountain lion seasons to address low calf survival, and efforts to improve elk habitat. These management activities would not be affected under the No-Action Alternative.

Preferred Alternative (Approve Requested Authorization). Under the preferred alternative, the Service would approve the IDFG 10(j) proposal to remove wolves in the Lolo Elk Management Zone to reduce wolf predation on elk populations over a 5-year period. This alternative would provide an adaptive management strategy to reduce the wolf population. Wolves would be removed to manage for a minimum of 20 to 30 wolves in 3 to 5 packs. Based on the 2009 year-end wolf population estimate of 76 wolves residing in the Lolo Elk Management Zone, the initial removal is estimated to be a minimum of 40 to 50 wolves. Levels of wolf removal in subsequent years are expected to be lower, and would be based on wolf population monitoring. Management activities would be intended to protect the elk population in the Lolo Elk Management Zone while maintaining wolf populations that meet recovery objectives. This alternative includes monitoring both wolf and elk populations yearly to determine elk response to the implementation of management activities and whether adaptive changes in wolf removal are needed based on yearly monitoring results.

Wolf removal would be accomplished by IDFG personnel and other approved agents of the State of Idaho. Wolves that inhabit the Lolo Elk Management Zone would be targeted for removal. Removal would be accomplished using legal means approved by the Service under provisions of the Service's 2008 10(j) rule. Wolf control will occur through shooting from aircraft or from the ground, or by capture with foothold traps or snares followed by euthanasia. IDFG is not proposing to use poison or other chemical means to control wolves. The goal of the removal would be to reduce pack sizes and, when appropriate, to remove entire packs. The primary removal effort would occur during the winter months. Most wolf control would occur on U.S. Forest Service lands outside of designated wilderness. IDFG is not proposing to use aircraft to remove wolves from within designated wilderness. Wolf carcasses would be recovered from the field, when possible, and processed for collection of biological data. Hides and skulls would be used for educational purposes.

Next Steps

After the comment period ends, we will analyze comments received and determine whether to: (1) Prepare a final EA and Finding of No Significant Impact and authorize lethal take of wolves in the Lolo Zone under section 10(j) of the ESA in response to wolf impacts on elk populations, (2) reconsider our preferred alternative and deny IDFG's proposal, or (3) determine that an Environmental Impact Statement should be prepared prior to authorizing or denying IDFG's proposal.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authorities

The Environmental Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*): NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; Executive Order 12996; and Service policies and procedures for compliance with those laws and regulations.

Dated: February 4, 2011.

Theresa E. Rabot,

Acting Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2011–3064 Filed 2–10–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD03000. L51100000. GN0000. LVEMK10CW580]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Lost Creek In Situ Uranium Recovery Project in Sweetwater County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Rawlins Field Office, Rawlins, Wyoming, intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until March 14, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/wy/st/en/info/NEPA/rfodocs/lostcreek.html.*

In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Lost Creek In Situ

Recovery Project by any of the following methods:

- *Web site: http://www.blm.gov/wy/st/en/info/NEPA/rfodocs/lostcreek.html;*
- *E-mail: Lost_Crk_Mine_WY@blm.gov;*
- *Fax:* (307) 328–4224; or
- *Mail:* Rawlins Field Office, Attention: Eldon Allison, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301–2407.

Documents pertinent to this proposal may be examined at the Rawlins Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Eldon Allison, Team Leader, telephone (307) 328–4267; address 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301–2407; e-mail *Eldon_Allison@blm.gov.*

SUPPLEMENTARY INFORMATION: The applicant Lost Creek ISR LLC (Lost Creek) has filed a plan of operations pursuant to the 43 CFR subpart 3809 regulations to construct an ore recovery plant, an access road to the site, and a pipeline system for the flow of oxidizing leach solution to injection wells and return of fluids from recovery wells to the recovery plant site; to drill injection, recovery and monitoring wells; and to construct associated facilities such as parking lots, power lines, *etc.* Development and recovery of the uranium consists of dissolving underground uranium-bearing minerals into solution and then bringing it to the surface facility for concentration.

The Lost Creek ISR project is located about 40 miles northwest of Rawlins, Wyoming, in Sweetwater County. More specifically, the project is located in sections 16–20, 29–31, T. 25 N., R. 92 W., and sections 13, 24, and 25, T. 25 N., R. 93 W. The project area boundary includes approximately 4,250 acres, but no more than 324 acres would be subjected to actual surface disturbance and would be approved by the BLM. Most of the surface disturbance would be related to construction of the well pads used to extract the uranium in solution from the site. Construction would occur year round. The plant site would comprise approximately 10 acres, including parking space for about 50–60 employees. Multiple subsurface ore bodies range in depth from about 300–700 feet below the surface. Each of the six separate cells containing uranium would be established and mined one at a time. It is expected that mining operations would last about 8 years. An estimated additional 3 years would be required for startup and closure of the site for a total project length of 11 years. A proposed final reclamation plan for the project area has been submitted. All surface facilities would be removed when the project is completed and the land re-contoured to near pre-disturbance condition and re-vegetated.

In conjunction with this proposal, Lost Creek has also applied for a material source license from the Nuclear Regulatory Commission (NRC). The NRC is in the process of conducting its own environmental review and has released a draft Supplemental EIS. BLM may decide it is appropriate to incorporate by reference into its own EIS all or part of the NRC's Supplemental EIS once it is complete. In 2009, the BLM and the NRC entered into a memorandum of understanding to foster greater cooperation between the agencies with regard to the development of uranium resources on public lands.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues:

1. What standard operating procedures, best management practices or mitigation measures are necessary to reduce impacts from mineral resource exploration and development?
2. How will access to and transportation across the BLM lands be influenced by project facilities?
3. Will changes to recreation and off-highway vehicle management be necessary to protect the safety of public land users?
4. How will project activities affect wildlife or wildlife habitat including threatened, endangered, candidate, and sensitive species?
5. What effects to vegetation (including noxious and invasive species) might be expected from project development?
6. Will special project considerations be necessary to protect cultural resources?
7. Will the project facilities change wildland fire management response?
8. Will the project affect livestock grazing?
9. What project facilities will influence visual resource management?
10. Will project development affect air and water quality?
11. Will project development affect groundwater quality and quantity?

The BLM will utilize and coordinate the NEPA commenting process to satisfy the public involvement process for section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3).

Native American Tribes in the project area were consulted regarding the proposed project in conjunction with the NRC environmental review process, which resulted in an agreement among certain Tribes, BLM, NRC, and the State Historical Preservation Office. The BLM has invited three Tribes to be cooperating agencies in its EIS process. Any additional Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, and Native American Tribes, along with other stakeholders that may be interested in or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7.

Donald A. Simpson,

State Director.

[FR Doc. 2011–3073 Filed 2–10–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYR01000 L54400000.EQ0000; LVCLK09K0760]

Notice of Availability of the Final Environmental Impact Statement for the Westside Land Conveyance Project, Washakie and Big Horn Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (FEIS) for the Westside Land Conveyance Project and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes this notice in the **Federal Register**.

ADDRESSES: Copies of the Westside Land Conveyance Project Environmental Impact Statement (EIS) are available for public inspection at the Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009, and Bureau of Land Management, Worland Field Office, 101 S. 23rd, Worland, Wyoming 82401. Interested persons may also review the FEIS on the Internet at *http://www.blm.gov/wy/st/en/info/NEPA/wfodocs/westside.html.*

FOR FURTHER INFORMATION CONTACT: Andrew Tkach, Planning and Environmental Coordinator, telephone: (307) 347–5251; address: Bureau of Land Management, Worland Field Office, 101 S. 23rd, Worland, Wyoming 82401; e-mail: *Andrew_Tkach@blm.gov.*

SUPPLEMENTARY INFORMATION: The FEIS analyzes the environmental consequences of a legislated land conveyance to the Westside Irrigation District (WID), Worland, Wyoming. Public Law 106–485 (Nov. 9, 2000; 114 Stat. 2199) directs the Secretary of the Interior, acting through the BLM, to convey to WID all right, title and interest, excluding mineral interest, in certain Federal land in Washakie and Big Horn Counties, Wyoming, upon completion of an environmental analysis under the NEPA and mitigation of identified adverse effects of the land transfer. The project area comprises approximately 16,500 acres, in Townships 48 N. and 49 N.; Ranges 92 W., 92½; W., and 93 W. The southern end of the project area is located approximately 5 miles northwest of Worland, Wyoming. The law specifies that acreage may be added to or subtracted from the project area to satisfy mitigation as required in the FEIS and its Record of Decision (ROD).

The FEIS analyzes and discloses environmental consequences of four alternatives:

- The No Action Alternative—analyzed for a baseline comparison although it is not an option under public law.
- Alternative 1—the legislated proposed action conveying approximately 16,500 acres.
- Alternative 2—under which only lands suitable for irrigation and needed for infrastructure would be conveyed; approximately 11,500 acres.
- Alternative 3—under which only lands suitable for irrigation and needed for infrastructure, and which exclude certain known eligible cultural sites, would be conveyed; approximately 9,740 acres. This alternative would also widen a wildlife migration corridor to the Bighorn River and reduce impacts to winter habitat.

Alternative 3 is the BLM's preferred alternative.

The law places no restrictions on the eventual uses or disposal of the land, and the BLM would exercise no regulatory control after the transfer. The WID has stated it will offer the land for sale for agricultural purposes.

The law further specifies that proceeds from the conveyance shall be deposited in a special account in the Treasury of the United States and shall be available to the Secretary of the Interior, without a further act of appropriation, for the acquisition of land, and interests in land, in the Worland District (now Worland Field Office), in Wyoming, such that the acquired lands will benefit public recreation, public access, fish and wildlife habitat, or cultural resources.

On February 22, 2005, the BLM published in the **Federal Register** a Notice of Intent to prepare an EIS under the NEPA. On January 11, 2008, the BLM published in the **Federal Register** a Notice of Availability (NOA) of the Draft EIS (DEIS) for the Westside Land Conveyance Project.

The State of Wyoming Water Development Commission (WWDC) is a co-lead agency as provided in 40 Code of Federal Regulations 1500–1580. The WWDC will use the FEIS and ROD in support of subsequent funding decisions should the irrigation district apply for water supply development assistance. Cooperating agencies in the preparation of the FEIS include Washakie and Big Horn Counties.

A ROD will be prepared after the close of the 30-day review period for the FEIS. Comments on the DEIS received from the public and internal BLM review were considered and incorporated as appropriate into the FEIS.

Authority: 40 CFR 1506.6 and 1506.10.

Donald A. Simpson,

State Director.

[FR Doc. 2011–3005 Filed 2–10–11; 8:45 am]

BILLING CODE 4310–22–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rate

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted preliminary annual fee rates of 0.00% for tier 1 and 0.074% (.00074) for tier 2 for calendar year 2011. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a Tribe has a certificate of self-regulation under 25 CFR part 518, the preliminary fee rate on class II revenues for calendar year 2011 shall be one-half of the annual fee rate, which is 0.037% (.00037).

FOR FURTHER INFORMATION CONTACT: Chris White, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax (202) 632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a semi-annual basis.

The regulations of the Commission and the preliminary rate being adopted today are effective for calendar year 2011. Therefore, all gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission by June 30, 2011.

Dated: January 31, 2011.

Tracie Stevens,

Chairwoman.

Dated: January 31, 2011.

Steffani A. Cochran,

Vice-Chairwoman.

Dated: January 31, 2011.

Daniel Little,

Associate Commissioner.

[FR Doc. 2011–3126 Filed 2–10–11; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 30 CFR Part 732

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR 732—Procedures and Criteria for Approval or Disapproval of State Program Submissions, has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost. The OMB control number for this collection of information is 1029–0024 and is found at 30 CFR 732.10.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by March 14, 2011, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–5806 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please refer to OMB control number 1029–0024 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically to *jtrelease@osmre.gov.* You may also review this collection by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in 30 CFR part 732 for approving or disapproving state program submissions. OSM is requesting a 3-year term of approval for the information collection activity.

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. The OMB control number for this collection of information is 1029–0024.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on November 17, 2010 (75 FR 70288). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR 732—Procedures and Criteria for Approval or Disapproval of State Program Submissions.

OMB Control Number: 1029–0024.

Summary: Part 732 establishes the procedures and criteria for approval and disapproval of State program submissions. The information submitted is used to evaluate whether State regulatory authorities are meeting the provisions of their approved programs.

Bureau Form Number: None.

Frequency of Collection: Once and annually.

Description of Respondents: 28 State and Tribal regulatory authorities.

Total Annual Responses: 43.

Total Annual Burden Hours: 7,565.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the addresses listed under **ADDRESSES**. Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 3, 2011.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–2908 Filed 2–10–11; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Funding Opportunity and Solicitation for Grant Applications (SGA) for Ex Offenders—Adult Program Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY 10–10.

SUMMARY: Through this notice, the U.S. Department of Labor's (the "Department") Employment and Training Administration (ETA) announces the availability of approximately $11.7 million in grant funds to provide pre-release and post-release services to ex-offenders returning to high poverty, high-crime communities. These services will include job training and employment preparation, mentoring, and assistance connecting to supportive services such as housing, substance abuse programs and mental health treatment. Specifically, the employment component of the grant will focus on the development of employment opportunities in in-demand occupations, including emerging "green" jobs. These grants will be awarded through a competitive process. The Department expects to award approximately 10 grants of approximately $1,170,000 each for a 27-month period of performance.

The complete SGA and any subsequent SGA amendments, in connection with this solicitation is described in further detail on ETA's Web site at *http://www.doleta.gov/grants/find_grants.cfm* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is March 17, 2011.

FOR FURTHER INFORMATION CONTACT: Brinda Ruggles, 200 Constitution

Avenue, NW., Room N4716, Washington, DC 20210; *Telephone:* 202–693–3437; *E-mail: ruggles.brinda@dol.gov.*

Signed in Washington, DC, this 8th day of February 2011.

Eric Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2011–3151 Filed 2–10–11; 8:45 am]

BILLING CODE 4510–FN–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through December 2011.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

Alexandre Mas,

Associate Director for Economic Policy, Office of Management and Budget.

Attachment

APPENDIX C

(Revised December 2010)

DISCOUNT RATES FOR COST–EFFECTIVENESS, LEASE PURCHASE, AND RELATED ANALYSES

Effective Dates. This appendix is updated annually. This version of the appendix is valid for calendar year 2011. A copy of the updated appendix can be obtained in electronic form through the OMB home page at *http://www.whitehouse.gov/omb/circulars_a094/a94_appx-c/,* the text of the main body of the Circular is found at *http://www.whitehouse.gov/omb/circulars_a094/,* and a table of past years' rates is located at *http://www.whitehouse.gov/sites/default/files/omb/assets/a94/dischist.pdf.* Updates of the appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381).

Nominal Discount Rates. A forecast of nominal or market interest rates for 2011 based on the economic assumptions for the Fiscal Year 2012 Budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES (IN PERCENT)

3-Year	5-Year	7-Year	10-Year	20-Year	30-Year
1.4	1.9	2.4	3.0	3.9	4.2

Real Discount Rates. A forecast of real interest rates from which the inflation premium has been removed and based on the economic assumptions from the 2012 Budget is presented below. These real rates are to be used for discounting constant-dollar flows, as is often required in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES (IN PERCENT)

3-Year	5-Year	7-Year	10-Year	20-Year	30-Year
0.0	0.4	0.8	1.3	2.1	2.3

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 2011-3044 Filed 2-10-11; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education, #9487.

Dates: March 16, 2011, 8:30 a.m.–5 p.m. and March 17, 2011, 8:30 a.m.–2 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Beth Zelenski, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda

March 16

- Update on recent NSF environmental activities.
- Update on national and international environmental collaborations.
- Meeting with the NSF Director.

March 17

- Update on NSF's Science, Engineering and Education for Sustainability portfolio (SEES).

Dated: February 8, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–3058 Filed 2–10–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: March 4, 2011 2 a.m.–5 p.m. EST Teleconference.

Place: National Science Foundation, Room 580, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. James Ulvestad, Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–8820.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To discuss the Committee's draft annual report due 15 March 2011.

Dated: February 8, 2011.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2011–3059 Filed 2–10–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Digital I&C Systems

The ACRS Subcommittee on Digital Instrumentation & Control (DI&C) Systems will hold a meeting on February 23, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 23, 2011—1 p.m. Until 5 p.m.

The Subcommittee will review draft final Regulatory Guide 1.152, "Criteria for Use of Computers in Safety Systems of Nuclear Power Plants," Revision 3 and other cyber security related activities under development by the staff. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Christina Antonescu (Telephone 301–415–6792 or E-mail *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: February 3, 2011.

Ilka Berrios,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–3121 Filed 2–10–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on February 24, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, February 24, 2011—8:30 a.m. Until 5 p.m.

The Subcommittee will review the supplemental Safety Evaluation Report (SSER), Supplement 22, associated with the staff's review of the Watts Bar Unit 2 Operating License Application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or E-mail *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to

present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: February 3, 2011.

Ilka Berrios,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–3125 Filed 2–10–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on February 24–25, 2011, 11545 Rockville Pike, Rockville, MD T–2B1.

The meeting will be open to public attendance with the exception of portions that may be closed to protect proprietary information pursuant to 5 U.S.C 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, February 24, 2011—8:30 a.m. Until 5:30 p.m.; Friday, February 25, 2011—8:30 a.m. Until 5:30 p.m.

The Subcommittee will review the staff's evaluation of the Point Beach Units 1 and 2 Extended Power Uprate application. The Subcommittee will hear presentations by and hold discussions with the NRC staff, NextEra Energy Point Beach LLC, and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Zena Abdullahi (Telephone 301–415–8716 or E-mail: *Zena.Abdullahi@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty five hard copies of each presentation or handout should be provided to the Designated Federal Official thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Designated Federal Official one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: February 3, 2011.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–3123 Filed 2–10–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2011–4; Order No. 663]

Postal Service Rate Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request concerning a Type 2 rate adjustment. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* February 14, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link located in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On January 31, 2011, the Postal Service filed a notice pursuant to 39 U.S.C. 3622(c)(10) and 39 CFR 3010.40 *et seq.* concerning a Type 2 rate adjustment.[1] The Notice concerns the inbound portion of a bilateral agreement with HongKong Post as a functionally equivalent agreement under the Inbound Multi-Service Agreements with Foreign Postal Operators 1 product in Docket Nos. MC2010–35, R2010–5 and R2010–6.

The Postal Service states that the Governors have authorized Type 2 rate adjustments for negotiated service agreements in accordance with 39 CFR 3010.40 *et seq.* that will result generally in more remunerative rates than the default rates set by the Universal Postal Union (UPU) Acts for inbound Letter Post items. *Id.* at 1. The agreement is scheduled to become effective April 1, 2011.[2]

In support of its Notice the Postal Service filed two attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal; and
- Attachment 2—a redacted copy of the agreement.

Related agreements. In Order No. 549, the Commission approved the Inbound

[1] Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, January 31, 2011 (Notice). *See also* PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010.

[2] The Postal Service's Notice states inadvertently that the agreement's rates are intended to become effective April 1, 2010. *Id.* at 2. The bilateral agreement provides that the agreement becomes effective upon the Postal Service obtaining all regulatory approvals and notifying HongKong Post that all such approvals have been obtained. The date of notification is the effective date unless the parties agree to an alternative date. The agreement will continue in effect through the remainder of this calendar year. For the next calendar year, the parties will evaluate the agreement to determine if it will be modified. *Id.* Attachment 2.

Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and two functionally equivalent agreements, Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement), and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (CPG) Agreement. The Postal Service and HongKong Post, the postal operator for Hong Kong, are parties to the instant agreement, which covers inbound Letter Post in the form of letters, flats, small packets, bags, and International Registered Mail service for Letter Post. *Id.* at 2–3. As in the current agreement with CPG in Docket No. R2010–6, the instant agreement also establishes an ancillary service for delivery confirmation scanning with Letter Post small packets. *Id.* at 3.

The Postal Service states its filings comply with 39 CFR 3010.40 *et seq.* for the implementation of a negotiated service agreement. The Notice identifies performance attributes associated with the agreement, *e.g.,* sortations for routing to the Postal Service's International Service Centers based on destination ZIP Codes, and delivery confirmation service for Letter Post small packets that includes separation of the pieces for efficiency in processing. Notice at 3–4.

Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service indicates that it intends to report information on this agreement through its Annual Compliance Report. While indicating its willingness to provide information on mail flows within the annual compliance review process, the Postal Service proposes that no special data collection plan be established for this agreement. With respect to performance measurement, it requests that the Commission exempt this agreement from separate reporting requirements under 39 CFR 3055.3 as determined in Order No. 549 for the agreements in Docket Nos. R2010–5 and R2010–6. *Id.* at 5–6.

Functional equivalency. The Postal Service advances reasons why the agreement is functionally equivalent to the previously filed TNT and CPG agreements and contains the same attributes and methodology. *Id.* at 7–9. It asserts that the instant agreement fits within the Mail Classification Schedule language for Inbound Multi-Service Agreements with the Foreign Postal Operators 1 product. Additionally, it states that it includes similar terms and conditions, *e.g.,* is with a foreign postal operator, conforms to a common description, and relates to rates for Letter Post tendered from the postal operator's territory with accompanying ancillary services. *Id.* at 7–8.

The Postal Service identifies specific terms that distinguish the instant agreement from the two existing agreements. *Id.* at 8–9. These include term, settlement charges and explanations, mail restrictions, and details on disclaimers, barcoding, and software. The Postal Service contends that the instant agreement is nonetheless functionally equivalent to existing agreements and "[t]he Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contracts." *Id.* at 9.

In its Notice, the Postal Service maintains that certain portions of the agreement, prices, and related financial information should remain under seal. *Id.* at 1, Attachment 1.

The Postal Service concludes that the inbound portion of the bilateral agreement with HongKong Post should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 10.

II. Notice of Filings

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than February 14, 2011.[3] The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth Moeller to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2011–4 to consider matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Kenneth Moeller is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than February 14, 2011.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–3166 Filed 2–10–11; 8:45 am]

BILLING CODE 7710–FW–P

[3] To provide interested persons sufficient time to comment in these proceedings, the Commission finds it appropriate to waive the 10-day comment period specified in 39 CFR 3010.44(a)(5). The modest extension will not prejudice either party to the agreement given the 45 days' advance notice required for Type 2 rate adjustments.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63843; File No. SR–ISE–2010–115]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Regarding Registration, Qualification, and Continuing Education Requirements for Members and Associated Persons

February 4, 2011.

I. Introduction

On December 1, 2010, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend registration, qualification, and continuing education requirements to all associated persons of its members. The proposed rule change was published for comment in the **Federal Register** on December 21, 2010.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change.

II. Background

The ISE's rules governing registration, examination, and continuing education requirements for associated persons of ISE members [5] currently apply to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63554 (December 15, 2010), 75 FR 80091 ("Notice").

[4] *See* Letter from James McHale, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission (dated January 19, 2011) ("SIFMA Letter").

[5] Under ISE Rule 100(a)(3), the term "associated person" or "person associated with a member" means any partner, officer, director or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a member or any employee of a member. ISE noted that an

associated persons who conduct a public customer business. They are subject to Chapter 6 of the ISE's rules, Doing Business with the Public. Associated persons of member organizations register with the Exchange via the Uniform Application for Securities Industry Registration or Transfer ("Form U4") through the Financial Industry Regulatory Authority's ("FINRA") Central Registration Depository System ("Web CRD"), and must pass the General Securities Representative examination ("Series 7") to function as representatives if accepting orders from non-member customers.[6] Options principals engaged in the supervision of options sales practices, must also pass the Registered Options Principal examination ("Series 4") or the General Securities Sales Supervisor examination ("Series 9/10").[7] Rule 604, Continuing Education for Registered Persons, sets out the continuing education requirements for associated persons of members that conduct business with the public.

III. Description of the Proposal

ISE proposes to amend its rules regarding registration, examination, and continuing education of associated persons to make them substantially similar to the registration, examination, and continuing education requirements of FINRA. Specifically, ISE proposes to require all associated persons of members, regardless of whether they conduct a public customer or proprietary securities business, to register, qualify and comply with continuing education requirements.

Proposed Rule 313 establishes the qualification and registration requirements for associated persons of members, including registration requirements for the Chief Compliance Officer ("CCO") of each member and for the Financial/Operations Principal ("FINOP") of each member subject to Rule 15c3–1 of the Exchange Act.[8] Proposed Rule 313 cross-references the existing registration, qualification and continuing education requirements set forth in Chapter 6,[9] as well as the forms that must be filed to register or terminate the registration of an associated person.[10]

Proposed Rule 313(a)(1) will require registration and qualification by associated persons engaged or to be engaged in the securities business of a member.[11] The associated persons must be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange. Under proposed Rule 313 all associated persons that are not already registered in Web CRD must register (*i.e.,* complete a Form U4) [12] and pass a qualification examination.[13]

Proposed Rule 313(b) requires the designation of a FINOP [14] by each member that is subject to Exchange Act Rule 15c3–1,[15] and proposed Rule 313(c) requires the designation of a CCO by each member. The FINOP and CCO are required to register and pass an appropriate qualification examination.[16] The Exchange proposes to include a limited exemption from the requirement to pass the CCO qualification examination.[17]

Each member must register with ISE every associated person acting in the capacity of a sole proprietor, officer, partner, director, FINOP, or CCO.[18] These associated persons must register as a principal on a Form U4 and pass principal qualification examinations. In addition, an associated person who is engaged in the supervision or monitoring of proprietary trading, market-making or brokerage activities and/or who is engaged in the supervision or training of those engaged in proprietary trading, market-making or brokerage activities will need to register and pass a principal qualification examination.[19] Thus, all individuals who supervise the securities business of a member, or who oversee associated persons of the member, must register and pass a principal qualification examination.[20]

In addition, the Exchange requires each member to have at least two individuals registered as principals who qualify as such by passing the relevant principal examination.[21] Proposed Supplementary Material to Rule 313.07 exempts members that are sole proprietors from this requirement. The Exchange may waive the requirement to have two principals if the member conclusively demonstrates that only one officer, partner or director is required.[22] The ability to waive this registration requirement is consistent with similar FINRA rules regarding principal registration.[23] ISE is also proposing to allow a member that conducts only proprietary trading [24] and has 25 or fewer registered persons to have only

organization could fall within the scope of this definition, but the Exchange is not intending to require registration by an organization. *See* Notice, p. 13; 75 FR 80091, at 80094.

[6] *See* ISE Rule 602.

[7] *See* ISE Rule 601.

[8] 17 CFR 240.15c3–1.

[9] *See* rules 601–603.

[10] *See* proposed Rule 313(d) and Supplementary Material to Rule 313.03.

[11] An associated person is engaged in the securities business of a member if (i) the associated person conducts proprietary trading, acts as a market-maker, effects transactions on behalf of a broker-dealer account, supervises or monitors proprietary trading, market-making or brokerage activities on behalf of the broker-dealer, supervises or conducts training for those engaged in proprietary trading, market-making or brokerage activities on behalf of a broker-dealer account; or (ii) the associated person engages in the management of any associated person identified as an officer, partner or director. *See* proposed Supplementary Material to Rule 313.06.

An individual with an indirect ownership interest in a member that is engaged in the securities business of such member is required to register under proposed Rule 313.

[12] *See* proposed Supplementary Material to Rule 313.01.

[13] ISE is working with other options self-regulatory organizations ("SROs") to develop an examination for associated persons who previously have not been required to register under SRO rules (*e.g.,* proprietary traders). *See* Notice, p. 16; 75 FR 80091, at 80095. *See also* Securities Exchange Act Release No. 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010) ("CBOE Registration Order").

[14] The duties of a FINOP include assuring that the member complies with applicable financial and operational requirements under SRO rules and the Exchange Act.

[15] 17 CFR 240.15c3–1.

[16] Proposed Rule 313(b) establishes the Series 27 examination as the qualification examination for a FINOP. The qualification examination for a CCO is the Series 14 examination. *See* proposed Rule 313(c) and Notice, p. 18; 75 FR 80091, at 80095.

[17] *See* proposed Rule 313(c).

[18] *See* proposed Supplementary Material to Rule 313.07. This requirement is consistent with FINRA's registration requirement for Principals (NASD Rule 1021). Under ISE's proposed rules, anyone functioning as a principal must register as such with the Exchange via a Form U4 through FINRA's Web CRD. (Generally, all principals must qualify as representatives before qualifying as principals.)

ISE did not use the term "Principal" in the proposed rules to avoid confusion with existing terms, such as "Options Principal." In this order the Commission refers to such persons as principals.

[19] *Id.*

[20] If an ISE rule does not specify the examination that will qualify an associated person for a particular category of registration, once the ISE has determined the appropriate examination for that category, the ISE will file a proposed rule change indicating the appropriate examination.

[21] This requirement is consistent with the registration requirement set forth in NASD Rule 1021. *See* proposed Supplementary Material to Rule 313.07.

[22] The Commission expects this waiver to be used in very limited circumstances.

[23] *See* NASD Rule 1021(e).

[24] For purposes of this requirement, a member is considered to conduct only proprietary trading if it has the following characteristics: (i) The member is not required by Section 15(b)(8) of the Exchange Act to become a FINRA member and is a member of another registered securities exchange not registered solely under Section 6(g) of the Exchange Act; (ii) all funds used or proposed to be used by the member are the member's own capital, traded through the member's own accounts; (iii) the member does not, and will not, have customers; and (iv) all persons registered on behalf of the member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the member. *See* proposed Supplementary Material to Rule 313.07.

one officer or partner registered and subject to a principal examination.[25] Proposed Rule 313(a)(1) states that a member shall not maintain a registration with the ISE for any person (1) who is no longer active in the member's securities business; (2) who is no longer functioning in the registered capacity; or (3) where the sole purpose is to avoid an examination requirement. A member cannot register any person where there is no intent to employ that person in the member's securities business. However, a member may maintain or make application for the registration of an individual who performs legal, compliance, internal audit, back-office operations, or similar functions for the member, or a person who performs administrative support functions for registered personnel, or a person engaged in the securities business of a foreign securities affiliate or subsidiary of the member.

Proposed Rule 313(a)(2) identifies several categories of associated persons that are exempt from these additional registration requirements, which include (i) associated persons functioning solely and exclusively in a clerical or ministerial capacity; (ii) associated persons that are not actively engaged in the securities business; (iii) associated persons functioning solely and exclusively to meet a need for nominal corporate officers or for capital participation; and (iv) associated persons whose functions are solely and exclusively related to transactions in commodities, transactions in security futures and/or effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange.[26]

Proposed Rule 313(e) sets forth the requirements for examinations where there is a lapse in registration.[27] Specifically, an associated person is required to pass the appropriate qualification examination for the category of registration if the associated person's registration has been revoked by the Exchange as a disciplinary sanction or if his most recent registration has been terminated for a period of two or more years.

Proposed Supplementary Material to Rule 313.05 permits the Exchange to waive the qualification examination requirement in exceptional circumstances where good cause is shown.[28]

Proposed Supplementary Material to Rule 313.03 requires any member that discharges or terminates the employment or retention of an individual required to register under proposed Rule 313 to comply with the termination requirements, including the filing of a Form U5, set forth in Rule 601(c) and Rule 603.

Proposed Supplementary Material to Rule 313.04 requires associated persons required to register under proposed Rule 313 to satisfy the continuing education requirements set forth in Rule 604, or any other applicable continuing education requirements as prescribed by ISE.[29] The Exchange is adding a provision detailing the procedures required for in-house delivery of the regulatory element. The required procedures address responsibility for the continuing education program, site, technology, and supervision requirements, and administration of the program. Members are required to file a letter of attestation signed by a senior officer or partner with their Designated Examining Authority, confirming the establishment of the required procedures, and must annually represent that all required procedures have been continuously maintained. These modifications will conform ISE's continuing education requirements to those of other SROs.[30]

Finally, ISE proposes to make non-substantive changes to ISE Rule 601 (Registration of Options Principals), Rule 602 (Registration of Representatives) and Rule 603 (Termination of Registered Persons) to define and reference certain terms consistently within these rules and with proposed Rule 313.[31]

IV. Comment Letter

The Commission received one comment letter on the proposed rule change.[32] The commenter asserts that the proposed rule change is overly broad in that it appears to impose registration, examination and continuing education requirements on associated persons in addition to those solely engaged in proprietary trading. The commenter also requested interpretive guidance and suggested several exemptions for associated persons from the new examination requirements.

The commenter requested confirmation that principals who are engaged in or supervise aspects of a member's securities business, other than proprietary trading, are not required to comply with the new registration, examination and continuing education requirements. These principals are already registered and qualified as general securities principals under ISE's rules. The ISE rules require associated persons to be registered in the category of registration appropriate to the function they perform, as prescribed by the Exchange. The intent of the proposed rule change is to ensure that all persons engaged in the securities business of member firms are subject to registration, examination and continuing education requirements. If the persons described by the commenter are already registered as general securities principals, then the Commission expects that they would not have to register under the new registration category as they are already qualified pursuant to ISE rules. Similarly, Series 7 licensed persons who conduct a retail business and are subject to continuing education requirements, would not need to register in the new registration category.[33]

Additionally, the commenter proposed that the ISE accept the Series

[25] *See* proposed Supplementary Material to Rule 313.07. This requirement is substantially similar to NASDAQ Rule 1021(e)(1).

[26] This rule is substantially similar to NASD Rule 1060.

[27] This rule is substantially similar to NASD rules 1021(c) and 1031(c).

[28] *See* NASD Rule 1070 (Qualification Examinations and Waiver of Requirements) and NYSE Rule 345 (Employees—Registration, Approval, Records).

In determining whether a waiver shall be granted, the Exchange considers, among other things, previous industry employment, training and/or the successful completion of similar qualification examinations of other self-regulatory organizations. The Commission believes this waiver authority should be used sparingly and expects ISE to maintain records of waivers granted and to utilize careful judgment in granting waivers. Under the proposed Rule, associated persons whose activities are limited solely to the transaction of business on the floor of another exchange will be subject to the continuing education requirements set forth in Rule 604 or any other continuing education requirements prescribed by the Exchange.

[29] If the ISE prescribes different or additional continuing education requirements it must file a proposed rule change.

[30] *E.g.,* NASD Rule 1120; CBOE Rule 9.3A. *See* CBOE Registration Order, *supra* note 13. Also, while the Exchange does not have a floor, for consistency with other SRO rules, the Exchange also proposes to delete language that excludes those people whose activities are limited solely to the transaction of business on a floor from the definition of "registered person" for purposes of Rule 604.

[31] *See* Notice, p. 21; 75 FR 80091, at 80096.

[32] *See supra* note 4.

[33] The commenter also raised certain questions solely pertinent to CBOE's filing and requested guidance regarding whether "risk managers" would be required to register under that SRO's new requirements. Although this comment is outside of the scope of this proposal, the Commission notes that CBOE rules exempt certain associated persons engaged in delineated activities from the new registration, examination and continuing education requirements. Unless a risk manager or associated person who has access to an exchange is specifically exempted from registering, those persons must register, pass an appropriate examination, and comply with continuing education requirements.

24 examination as an alternative to the Series 14 examination for Chief Compliance Officers, and that the ISE should exempt from the Series 14 requirement Chief Compliance Officers with a current Series 24 license who have held the Series 24 license for a minimum of three years and have no regulatory history. The commenter also suggested that individuals with no regulatory history who currently hold the Series 24 and either the Series 9/10 or the Series 4 for a minimum of three years should not have to take a new trading examination, and that the same should apply to individuals with no regulatory history who are currently Series 7 as well as Series 9/10 or Series 4 licensed for a minimum of three years. The commenter also asked whether ISE will view the examination for proprietary traders being developed as a prerequisite to the Series 24 and the Series 9/10.

The Commission notes that ISE has the authority to waive the applicable qualification examination requirement and accept other standards as evidence of an applicant's qualifications for registration, if the applicant demonstrates good cause. The Commission understands that the new examination will serve as a prerequisite to the Series 24 and the Series 9/10 examinations for principals who are engaged solely in proprietary trading.

Finally, the commenter is concerned that ISE members will not have the opportunity to comment on the new examination. The Commission notes that any new examination created will be subject to the filing requirements of Section 19(b) of the Act and, as such, will be published in the **Federal Register** for comment.

V. Discussion and Commission Findings

In order to meet its obligations under Section 6 of the Act [34] to enforce compliance by member firms [35] and their associated persons with the Act, the rules thereunder, and the Exchange's own rules, an exchange must have baseline registration and examination requirements for all persons conducting business on an exchange, as well as for those supervising the activity. In addition, an exchange should have continuing education requirements for registered persons to help ensure that members and persons associated with their members are up to date on amendments to the Exchange's rules and the securities laws, rules, and regulations that govern their activities. Furthermore, the Exchange must have the information necessary to know if an associated person of a member firm is subject to a statutory disqualification.[36] This information is elicited by the Form U4, which is used by most SROs to register associated persons.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[37] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[38] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 believes that the proposed rule change is also consistent with Section 6(c)(3)(B) of the Act,[39] which authorizes exchanges to prescribe standards of training, experience and competence for persons associated with exchange members, and gives exchanges the authority to bar a natural person from becoming a member or a person associated with a member, if the person does not meet the standards of training, experience and competence prescribed in the rules of the exchange.

ISE's proposed rule change requires all associated persons of member organizations engaged in a securities business on ISE, as well as those who supervise, train or otherwise oversee those who do, to register with the Exchange via the Form U4, qualify by passing an appropriate examination, and comply with continuing education requirements. The Commission believes that ISE's requirements help ensure that all associated persons who transact business on ISE, including those engaged in proprietary trading, are subject to appropriate registration, qualification, and continuing education requirements and is consistent with the Act. These requirements bolster the integrity of the Exchange by helping to ensure that all associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators.

The Commission understands that the ISE is working with the other options exchanges to develop an exam for proprietary traders. The Commission expects the exam to be filed with the Commission no later than May 12, 2011.[40] If the exam is not filed by that time, the Commission expects ISE to require all associated persons engaged in the securities business of a member to promptly take and pass the Series 7 examination.

The requirement for each member to have a CCO who must register and pass the Series 14 and a FINOP who must register and pass the Series 27 is appropriate based on the heightened level of accountability inherent in the duty of overseeing compliance by an Exchange member, and in the oversight and preparation of financial reports, and the oversight of those employed in financial and operational capacities at each firm.

Additionally, the Commission believes that the requirement that all principals register through WebCRD and pass principal exams appropriately reflects the enhanced responsibility entrusted to principals. The requirement that members have at least two principals responsible for oversight of member organization activity on ISE, who must be registered as such and pass a principal exam, should help ISE strengthen the regulation of its member firms, and prepare those individuals for their responsibilities. The nature of the firm, however, may dictate that more than two principals are needed to provide appropriate supervision.

The Commission also believes ISE's proposed exceptions from the above-discussed general requirements are appropriate. Any member seeking an exception from the two principal requirements must provide evidence that conclusively indicates to the Exchange that only one principal is necessary. The Commission expects this authority to be used sparingly, because

[34] Section 6 requires exchanges to have the ability to enforce compliance by their members and associated persons with the Federal securities laws and with their own rules. 15 U.S.C. 78f.

[35] Brokers and dealers are required to supervise the activities of their associated persons. *See* Section 15(b)(4)(E) of the Act.

[36] *See* Section 6(c)(2) of the Act and Rule 19h–1 under the Act. The Commission believes that it is important that certain registration information, such as whether an associated person is subject to a statutory disqualification, be available to exchanges and other regulators, including the Commission and the State securities regulators, through WebCRD as well as members of the public through BrokerCheck, which derives information from WebCRD.

[37] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78f(c)(3)(B).

[40] Associated persons of ISE members will have 90 days from the date the examination becomes available to take and pass the examination.

such persons oversee the operations of member firms and provide the first line of defense in ensuring that member firms are complying with the rules of the exchange as well as the Federal securities laws. In addition, ISE may waive the qualification examination requirement in exceptional cases where the applicant has demonstrated that good cause exists to grant the waiver. The Commission also expects this authority to be used sparingly. Finally, the Commission notes that these exceptions are substantively the same as exceptions provided in similar rules at other SROs.[41]

The Commission believes the restrictions on registration that bar a member from maintaining a registration with ISE (1) persons no longer active in the member's securities business, (2) persons no longer functioning in the registered capacity, or (3) avoidance of an examination requirement, are appropriate. These limitations should help ensure that only persons qualified for their category of registration who are engaged in a securities business are able to transact business on the ISE.

The Commission notes that ISE has exempted several categories of associated persons from the new registration requirements. These persons would not be considered to be actively engaged in a securities business unless they are registered on the floor of another exchange, in which case they would not have to register with ISE.[42] The Commission understands that ISE's proposed rule change applies to all associated persons conducting a securities business, on a proprietary or agency basis, on ISE.

The Commission believes ISE's proposed provision requiring any person whose registration has been revoked by the Exchange as a disciplinary sanction, or whose most recent registration as a principal or representative has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application, to pass the qualification examination appropriate to such person's category of registration is appropriate. This requirement should help to ensure that an associated person's qualifications are current.[43]

ISE's proposed rule change will help ensure that all associated persons of members transacting business on ISE, as well as those who supervise, train or otherwise oversee those who do, will be registered with, and qualified by, the Exchange and will be subject to continuing education requirements. The proposal will enhance ISE's ability to ensure an effective supervisory structure for those conducting business on ISE. The requirements apply broadly and are intended to help close a regulatory gap which has resulted in varying registration, qualification, and supervision requirements across markets. The Commission believes that the changes proposed by ISE to its rules will strengthen the regulatory structure of the Exchange and should enhance the ability of its members to comply with the Exchange's rules as well as with the Federal securities laws.

Additionally, the Commission believes that the proposed rule change is consistent with the principles of Section 11A(a)(1)(22) of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Commission believes that the proposed rule change will promote uniformity of regulation across markets, thus reducing opportunities for regulatory arbitrage. ISE's proposed rule change helps ensure that all persons conducting a securities business through ISE are appropriately supervised, as is required under the Exchange Act.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–ISE–2010–115), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3032 Filed 2–10–11; 8:45 am]

BILLING CODE 8011–01–P

[41] *See, e.g.,* FINRA Rule 1070(d) and NASDAQ Rule 1070(d).

[42] *See* Notice, p. 17; 75 FR 80095. Such persons must comply with Section 15(b)(8) of the Exchange Act.

[43] Additionally, the Commission believes that the proposed revisions to Rules 601 (Registration of Options Principals) 602 (Registration of Representatives), and 603 (Termination of Registered Persons) to update certain references pertaining to registration and termination forms, as well as to WebCRD and FINRA, will provide clarity to ISE's rules, enabling regulators, members, and the general public to better understand the rules.

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63860; File No. SR–Phlx–2010–176]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of Alpha Index Options

February 7, 2011.

I. Introduction

On December 10, 2010, NASDAQ OMX PHLX LLC (the "Exchange" or "Phlx") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] a proposed rule change to amend certain of its rules to provide for the listing and trading of options on NASDAQ OMX ("Nasdaq") Alpha Indexes℠ (the "Alpha Indexes") on the Exchange's electronic trading platform for options. The proposed rule change was published for comment in the **Federal Register** on December 27, 2010.[2] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

The Exchange proposes to list and trade cash-settled, European-style options on Alpha Indexes.

Index Design and Composition

Alpha Indexes measure relative total returns of one stock and one exchange-traded fund share ("ETF") underlying options which are also traded on the Exchange (each such combination of two components is referred to as an "Alpha Pair").[3] The first component identified in an Alpha Pair (the "Target Component") is measured against the second component identified in the Alpha Pair (the "Benchmark Component").

The Exchange proposes to list and trade Alpha Index options only on the following Alpha Pairs: AAPL/SPY, AMZN/SPY, CSCO/SPY, F/SPY, GE/SPY, GOOG/SPY, HPQ/SPY, IBM/SPY, INTC/SPY, KO/SPY, MRK/SPY, MSFT/SPY, ORCL/SPY, PFE/SPY, RIMM/SPY, T/SPY, TGT/SPY, VZ/SPY and WMT/SPY. The Exchange represents that it will not list Alpha Index options on any other Alpha Pairs without filing a

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 63575 (December 17, 2010), 75 FR 81320 ("Notice").

[3] The total return measures performance (rate of return) of price appreciation plus dividends over a given evaluation period.

proposed rule change seeking Commission approval.

Index Calculation

In order to calculate an Alpha Index, Nasdaq measures the total return performance of the Target Component relative to the total return performance of the Benchmark Component, based upon prices of transactions on the primary listing exchange of each underlying component. The Exchange has represented that any Target Component or Benchmark Component upon which an Alpha Index is based will meet the Exchange's listing standards, and options overlying them will already be listed and traded on the Exchange. Further, the value of each Alpha Index will initially be set at 100.00.

To calculate an Alpha Index, Nasdaq first calculates a daily total return for both the Target Component and the Benchmark Component of the Alpha Pair. To calculate the daily total return today, the previous trading day's closing market price for the component would be subtracted from today's closing market price for the component to determine a price difference (the "Price Difference"). The Price Difference would be added to any declared dividend, if today were an "ex-dividend" date, to yield the Price Plus Dividend Difference for the component. The Price Plus Dividend Difference for the component is then divided by the previous trading day's closing market price for the component, and the result is rounded to four decimal places to yield the total daily return.

The total daily return for each component is then added to the whole number one, which permits the ultimate Alpha Index to be expressed in percentage terms. This figure for the Target Component is then divided by the comparable figure for the Benchmark Component, and then multiplied by previous trading day's closing Alpha Index value. The resulting level depicts the Target Component's total return performance versus that of the previous trading day.

In the case of a corporate event which eliminates one of the underlying components of an Alpha Pair, Nasdaq will cease calculation of the Alpha Index for that Alpha Pair and all outstanding option positions for that Alpha Pair will be immediately settled at the last disseminated price of that Alpha Index. In the case of a corporate event such as a spin off that affects the price of one of the underlying components, Nasdaq will make an appropriate one-time adjustment to the price of the underlying component used in the calculation to ensure that the Alpha Index continues to reflect the daily total return of the component.

Alpha Index values will be disseminated every second over the NASDAQ OMX Global Index Data Service ("GIDS").[4]

Contract Specifications

The Exchange represents that Alpha Indexes are not broad-based or narrow-based indexes. Rather, they are strategy-based indexes that measure the relative total return of one stock and one ETF. Options on Alpha Indexes are European-style and A.M. cash-settled. The trading hours for options on the Alpha Indexes will be from 9:30 a.m. to 4:15 p.m. (Philadelphia Time).

There will be at least two expiration months from the March, June, September, December cycle plus two additional near-term months so that the three nearest term months will always be available. Minimum strike price intervals for Alpha Index options would be at 1 point intervals. In addition, the minimum tick size for series of Alpha Index options trading below $3 shall be $0.05, and for series trading at or above $3 shall be $0.10.

Listing Requirements

Alpha Index options will be listed only on Alpha Indexes comprised of Alpha Pairs that are actively traded. Rule 1009A, Designation of the Index, is being amended to provide that at the time of the listing of an Alpha Index option, options on each underlying component must also be listed and traded on the Exchange and must meet the requirements of Rule 1009, Criteria for Underlying Securities. Additionally, Rule 1009A is being amended to provide that each underlying component's trading volume (in all markets in which the underlying security is traded) must have averaged at least 2,250,000 shares per day in the preceding twelve months. Further, following the listing of an Alpha Index option, options on each of the component securities of the Alpha Index must continue to meet the continued listing standards set forth by Exchange Rule 1010, Withdrawal of Approval of Underlying Securities or Options. Also, each underlying component's trading volume (in all markets in which the underlying security is traded) must have averaged at least 2,000,000 shares per day in the preceding twelve months.

Finally, Rule 1009A is being amended to provide that no Alpha Index option will be listed unless and until options overlying each of the Alpha Index component securities have been listed and traded on a national securities exchange with an average daily options trading volume during the three previous months of at least 10,000 contracts. Following the listing of an Alpha Index option, options on each of the component securities of the Alpha Index must continue to meet this options average daily volume standard.

Index Option Trading

The Exchange proposes to list series of Alpha Index options at $1 or greater strike price intervals, and to list at least two strike prices above and two strike prices below the current value of each Alpha Index option at about the time a series is opened for trading on the Exchange.[5] The Exchange may also list additional strike prices at any price point, with a minimum of a $1.00 interval between strike prices, as required to meet the needs of customers.[6]

Under Exchange Rule 1033A, Meaning of Premium Bids and Offers, bids and offers in index options are to be expressed in terms of dollars and decimal equivalents of dollars per unit of the index. As proposed by the Exchange, the minimum tick size for series of Alpha Index options trading below $3 will be $0.05 and for series trading at or above $3 will be $0.10; provided, however, that if options on either component of an Alpha Pair have a minimum tick size of $0.01, options on the Alpha Index will also have a minimum tick size of $0.01.[7]

Pursuant to Exchange Rule 1047A(c), trading in Alpha Index options may be halted with the approval of an Options Exchange Official, whenever trading on the primary market of one of the Alpha Pair components is halted or suspended. Additionally, Exchange Rule 1047A(c) provides that trading shall be halted whenever an Options Exchange Official deems such action appropriate in the interests of a fair and orderly market and to protect investors. Rule 1047A(c) is being amended to provide that the Exchange will also halt trading in any Alpha Index option whenever trading is halted in an option overlying one or both of the components of the Alpha

[4] *See http://www.nasdaqtrader.com/Trader.aspx?id=globalindexDS* for a description of the NASDAQ OMX Global Index Data Service.

[5] *See* Exchange Rule 1101A, Terms of Option Contracts, as proposed to be amended.

[6] *See id.*

[7] *See* Exchange Rule 1034, Minimum Increments, as proposed to be amended.

Pair.[8] Finally, the Exchange represents that if Nasdaq should cease calculation of the Alpha Index due to a corporate event (such as a merger) affecting one or more components of the Alpha Pair, the Exchange will halt trading in the option and all open contracts will be immediately settled at the last Alpha Index price to be disseminated. Re-openings are conducted pursuant to Rule 1047A(d), which is being amended so that it clearly applies to Alpha Indexes in addition to stock indexes.

Rule 1092, Obvious Errors and Catastrophic Errors, is being amended to provide that trades of Alpha Index options on the Exchange will be nullified pursuant to subsection (c)(iv)(C) of that rule if the trade occurred during a trading halt on the primary market of either component security of the Alpha Pair. The word "percent" is being added to the previous clause applicable to stock index options to correct an inadvertent omission in the existing rule text.

The Exchange will trade consecutive and cycle month series pursuant to Exchange Rule 1101A. Specifically, the Exchange represents that there will be at least two expiration months from the March, June, September, December cycle plus two additional near-term months so that the three nearest term months will always be available. The trading hours for options on Alpha Indexes will be from 9:30 a.m. to 4:15 p.m. (Philadelphia Time).[9] Alpha Index options are index options that are available for FLEX trading.[10]

Exercise and Settlement

Options on any Alpha Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 4:15 p.m. (Philadelphia Time) on the last day of trading. Exercise will result in delivery of cash on the business day following expiration. Additionally, Alpha Index options will be A.M.-settled.[11] The exercise settlement value will be based upon the opening price of the individual stock or ETF from its primary listing market on the last trading day prior to expiration (usually a Friday).[12]

The exercise settlement amount of an Alpha Index option will be equal to the difference between the exercise settlement value and the exercise price of the option, multiplied by $100. When the last trading day is moved because of Exchange holidays, the last trading day for expiring options will be the day immediately preceding the last regularly-scheduled trading day.

Position Limits

The Exchange proposes that the position limit for an option on an Alpha Index shall be 60,000 contracts on the same side of the market.[13] For purposes of determining compliance with position limits, positions in Alpha Index options will be aggregated with positions in equity options on the underlying securities.[14] All position limit hedge exemptions will apply. Section (a) of Commentary .01 to Rule 1001A is being amended by adding clause (iii), which provides that each Alpha Index option position to be exempted under the index hedge exemption must be hedged by a position in each of the component securities underlying the Alpha Index.

Margin

The Exchange will set customer margin levels for Alpha Index options at the level of the higher of the margin required for options on the Target Component or the margin required for options on the Benchmark Component.[15]

Exchange Rules Applicable

The Exchange represents that, except as modified in the proposed rule change, Exchange Rules 1000A–1107A, Rules Applicable to Trading of Options on Indices, will be applicable to Alpha Index options. The Exchange proposes minor amendments to reflect the trading of Alpha Index options, which are not the narrow-based or broad-based stock index options that the Exchange currently trades, but rather are strategy-based securities index options based upon an index whose construction and calculation differ from those of stock index options.

Systems Capacity

The Exchange affirms that it possesses the necessary systems capacity to support any new series that would result from the introduction of options on Alpha Indexes. The Exchange also represents that it has been informed that the Options Price Reporting Authority ("OPRA") has the capacity to support such new series.

Clearing

Alpha Index options are "Strategy Based Options" that will be cleared by the Options Clearing Corporation.

Surveillance

The Exchange represents that the surveillance for opening price manipulation will be in place for the launch of options on Alpha Indexes, and other existing surveillance patterns will be utilized to monitor trading in options on each Alpha Index. The Exchange further represents that these surveillance procedures are adequate to monitor the trading of options on Alpha Indexes. For surveillance purposes, the Exchange represents that it will have complete access to information regarding trading activity in the pertinent underlying securities and options thereon.

Customer Protection

The Exchange represents that Exchange rules designed to protect public customers who trade in options would apply to Alpha Index options. Exchange Rule 1026 is designed to ensure that options, including Alpha Index options, are sold only to customers capable of evaluating and bearing the risks associated with trading in the instruments. Exchange Rule 1024, applicable to the conduct of accounts, Exchange Rule 1025 relating to the supervision of accounts, Exchange Rule 1028 relating to confirmations, and Exchange Rule 1029 relating to delivery of options disclosure documents also would apply to trading in Alpha Index options.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and

[8] *See* Exchange Rule 1047A, Trading Rotations, Halts or Reopenings, as proposed to be amended.

[9] *See* Exchange Rules 1101A, Terms of Option Contracts, Commentary .01, and 101, Hours of Business.

[10] *See* Exchange Rule 1079, FLEX Index, Equity and Currency Options, as proposed to be amended. The Exchange also proposes that separate position limits apply to FLEX Alpha Index options, which are the same as the position limits applicable to non-FLEX Alpha Index options.

[11] *See* Exchange Rule 1009A, Designation of the Index, as proposed to be amended.

[12] *See id.*

[13] *See* Exchange Rule 1001A, Position Limits, as proposed to be amended.

[14] *See id.*

[15] *See* Exchange Rule 721, Proper and Adequate Margin, as proposed to be amended.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

[17] 15 U.S.C. 78f(b)(5).

equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

As a national securities exchange, the Phlx is required, under Section 6(b)(1) of the Act,[18] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade Alpha Index options will also be subject to best execution obligations and FINRA rules.[19] Applicable Exchange rules also require that customers receive appropriate disclosure before trading Alpha Index options.[20] Furthermore, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[21]

The trading of options on Alpha Indexes will be governed by Exchange Rules 1000A–1107A, the Exchange's trading rules for options on indices. The Commission believes that the listing rules proposed by the Exchange are consistent with the Act. The Commission also notes that Alpha Index options will be listed only on specified Alpha Indexes.[22] In addition, proposed changes to Rule 1009A requires that each underlying component's trading volume (in all markets in which the underlying security is traded) must have averaged at least 2,250,000 shares per day in the preceding twelve months and on a continuing basis must have averaged at least 2,000,000 shares per day in the preceding twelve months. The Commission believes that these requirements help to ensure that only highly liquid securities would underlie Alpha Indexes.

The Commission notes that the Exchange has represented that it will have appropriate surveillance procedures in place for trading in Alpha Index options. Opening price manipulation surveillance will be in place for the launch of options on Alpha Indexes and other existing surveillance patterns will be utilized to monitor trading in options on each Alpha Index. In addition, for surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities and options thereon. Further, the Commission believes that the Exchange's proposed position and exercise limits for the Alpha Index options are appropriate and consistent with the Act.

The Exchange has affirmed that it possesses the necessary systems capacity to support any new series that would result from the introduction of options on Alpha Indexes.[23] In addition, one point strike price intervals for Alpha Index options should provide investors with flexibility in the trading of Alpha Index options and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–Phlx–2010–176) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3034 Filed 2–10–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63857; File No. SR–BATS–2011–004]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

February 7, 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 31, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 1, 2011.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule effective February 1, 2011, in order to: (i) Adjust fees for "logical" ports used for order entry or receipt of Exchange data; and (ii) adjust the fees for orders executed at other options exchanges through Exchange-offered routing strategies in order to more closely reflect the Exchange's cost of executing orders at such away markets.

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[18] 15 U.S.C. 78f(b)(1).

[19] *See* NASD Rule 2320.

[20] *See* Exchange Rule 1029.

[21] *See* Exchange Rule 1026. *See also* Exchange Rules 1024 and 1025.

[22] AAPL/SPY, AMZN/SPY, CSCO/SPY, F/SPY, GE/SPY, GOOG/SPY, HPQ/SPY, IBM/SPY, INTC/SPY, KO/SPY, MRK/SPY, MSFT/SPY, ORCL/SPY, PFE/SPY, RIMM/SPY, T/SPY, TGT/SPY, VZ/SPY and WMT/SPY.

[23] The Commission notes that Alpha Index values will be disseminated every second over the NASDAQ OMX Global Index Data Service.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

(i) Fees for Logical Ports

The Exchange proposes to raise the fee for each pair[6] of logical ports from $250 each month to $400 each month. A logical port is also commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or PITCH data receipt.

The proposed fee increase for each pair of logical ports is designed to help offset increasing infrastructure costs associated with the implementation of internally developed real-time latency monitoring on all FIX order entry ports. The latency monitoring offered by the Exchange beginning February 1, 2011 will be similar to that provided by other exchanges through outside vendors, except that the Exchange does not currently propose to charge any additional fees for latency monitoring on FIX ports.

As proposed, the change applies to Members that obtain ports for direct access to the Exchange, Sponsored Participants[7] sponsored by Members to receive direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, and market data recipients. While the proposal would represent an increase in the monthly fee assessed by the Exchange for all logical ports (including logical ports unaffected by the Exchange's offering of latency monitoring on FIX ports), the Exchange's overall connectivity fees remain lower than those of its primary competitors.

(ii) Routing Pricing

The Exchange proposes to adjust its fees for options order routing. Rather than continuing to subsidize its Members' routing strategies, the Exchange proposes to adjust routing fees to more closely reflect the Exchange's cost of executing those orders at away markets. Specifically, the Exchange proposes to assess the following per contract fees for Customer orders that are routed to the named away exchange: $0.06 for all orders in non-"Make/Take" issues,[8] if applicable, routed to NYSE Amex, NYSE Arca, the Boston Options Exchange, the Chicago Board Options Exchange, the International Securities Exchange, or NASDAQ OMX PHLX; $0.30 for all orders routed to the Chicago Board Options Exchange 2, the International Securities Exchange in Make/Take issues, or NASDAQ OMX PHLX in Make/Take issues; and $0.50 for all orders routed to Nasdaq Options Market or NYSE Arca in Make/Take issues. The Exchange also proposes to assess a routing fee of $0.55 per contract for all Firm and Market Maker orders that are routed to any away exchange pursuant to the order routing strategies offered by the Exchange.

The Exchange believes that the proposed routing fees are competitive, fair and reasonable, and non-discriminatory in that they approximate the cost to the Exchange of executing routed orders at an away market and are similar to those fees charged by other exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[9] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

With respect to the increase in logical port fees, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees are competitive with those charged by other venues, and that its fees for connectivity are still less expensive than its primary competitors. In addition, at the same time as the Exchange is increasing its fee per logical port, the Exchange is making available to its Members real-time latency monitoring without any additional fee. Accordingly, the Exchange believes that the increase to port fees will help the Exchange to continue to maintain and improve its infrastructure, while also encouraging Exchange customers to request and enable only the ports that are necessary for their operations related to the Exchange.

With respect to the increase in routing fees for BATS Options, although routing options are available to all Members, Members are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and non-members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2) thereunder,[12] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.[13]

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

[6] Each pair of ports consists of one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

[7] A "Sponsored Participant" is as a firm that is sponsored by a Member of the Exchange to access the Exchange and that meets the criteria of Exchange Rule 11.3.

[8] As defined on the fee schedule, Make/Take pricing refers to executions at the identified Exchange under which "Post Liquidity" or "Maker" rebates ("Make") are credited by that exchange and "Take Liquidity" or "Taker" fees ("Take") are charged by that exchange.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] *See* Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both.

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–BATS–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–BATS–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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2011–004 and should be submitted on or before March 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3035 Filed 2–10–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 7333]

Culturally Significant Objects Imported for Exhibition Determinations: "Neoclassicism: A Taste for the Antique"

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 "Neoclassicism: A Taste for the Antique," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Fine Arts, Houston, Houston, TX, from on or about March 20, 2011, until on or about May 30, 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: February 4, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–3127 Filed 2–10–11; 8:45 am]

BILLING CODE 4710–05–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Alaska Central Express, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2011–2–4), Docket DOT–OST–1996–1657.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Alaska Central Express, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than February 18, 2011.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–1996–1657, and addressed to U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Rm. W12–140, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Catherine O'Toole, Air Carrier Fitness Division (X–56), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: February 4, 2011.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2011–3102 Filed 2–10–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Policy Statement on Expungement of Certain Enforcement Actions

AGENCY: Federal Aviation Administration, DOT.

ACTION: Policy statement.

SUMMARY: The FAA has temporarily suspended its policy of expunging certain records of legal enforcement actions against individuals in order to ensure compliance with recent amendments to the Pilot Records Improvement Act.

DATES: This policy became effective November 1, 2010.

FOR FURTHER INFORMATION: A frequently asked questions (FAQ) page about the suspension of the expunction policy and its effects on pilots is available at: *http://www.faa.gov/pilots/lic_cert/pria/guidance/pilotfaq.* Further questions may be directed to *9-AGC-ExpunctionSuspension@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background: In 1991, the FAA adopted a policy of expunging records of certain closed legal enforcement actions against individuals, see 56 FR 55,788 (Oct. 29, 1991). This includes both airman certificate holders and non-holders, such as passengers. Among other things, the policy provides that, in general, records of legal enforcement actions involving suspension of an airman certificate or a civil penalty against an individual are maintained for five years, then expunged. Cases closed with no enforcement action are expunged within ninety days. In addition, the FAA has a policy of expunging records of administrative actions after two years that was in existence at the time of and was left unchanged by the adoption of the 1991 expunction policy.

On August 1, 2010, the Airline Safety and Federal Aviation Administration Extension Act of 2010, Public Law 111–216, 124 Stat. 2348 (2010) ("Act"), was signed into law. The Act amends the Pilot Records Improvement Act ("PRIA") by requiring the FAA to create a pilot records database. Air carriers will use this database to perform background checks on pilots before hiring them, as required by PRIA. The database will contain various types of records, including summaries of legal enforcement actions against individuals resulting in a finding by the FAA Administrator of a violation. These records must be kept by the FAA until it receives notice that the individual is deceased. The requirement to keep these records began on the date of the law's enactment, August 1, 2010.

The five-year expunction of certain legal enforcement action records is not consistent with the Act's amendments to PRIA. Although the requirement to maintain the records began on August 1, 2010, the FAA last expunged on November 1, 2010, as we began determining which records must be kept in order to comply with the law. The November 1, 2010 expunction covered records from scheduled for expunction during October. We will continue to expunge records of administrative actions and cases with no enforcement action, as PRIA does not require the FAA to put this information in the pilot record database. The FAA will determine the full effect of the Act's requirements on the expunction policy and will amend its expunction policy accordingly. The details of the amended expunction policy will be published in the **Federal Register**.

Issued in Washington, DC on February 4, 2011.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2011–3101 Filed 2–10–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: March 3, 2011, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call 877–768–0032, passcode, 4856462 to participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: February 8, 2011.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2011–3229 Filed 2–9–11; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0372]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 19 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before March 14, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0372 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit

http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 19 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

James L. Acree

Mr. Acree, age 56, has had chronic open angle glaucoma in his left eye since 2006. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2010, his optometrist noted, "In my professional opinion, Mr. Acree has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Acree reported that he has driven straight trucks for 20 years, accumulating 300,000 miles and tractor-trailer combinations for 17 ½; years accumulating 2.6 million miles. He holds a Class A Commercial Driver's License (CDL) from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Tracey M. Baucom

Mr. Baucom, 37, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/25 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "In my medical opinion, Mr. Tracey Baucom has demonstrated that he has sufficient vision to drive and operate commercial vehicle." Mr. Baucom reported that he has driven straight trucks for 5 years, accumulating 125,000 miles and tractor-trailer combinations for 1 year accumulating 500 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David L. Botkins

Mr. Botkins, 58, has had corneal scar and amblyopia in his right eye since 1961. The visual acuity in his right eye is count-finger vision and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Mr. Botkins has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Botkins reported that he has driven straight trucks for 33 years, accumulating 57,750 miles. He holds a Class D operator's license from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard D. Flaherty

Mr. Flaherty, 50, has had a prosthetic right eye since 1999. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion Doug Flaherty has excellent vision in his remaining eye OS to safely operate a commercial vehicle." Mr. Flaherty reported that he has driven straight trucks for 15 years, accumulating 390,000 miles and tractor-trailer combinations for 15 years accumulating 615,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael R. Holmes

Mr. Holmes, 61, has had ocular melanoma in his right eye since 2003. The best corrected visual acuity in his right eye is Light perception and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "It is in my medical opinion that patient does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Holmes reported that he has driven straight trucks for 39 years, accumulating 1.5 million miles and tractor-trailer combinations for 11 years accumulating 110,000 miles. He holds a Class A CDL from South Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James W. Hoover

Mr. Hoover, 44, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "With his level of vision and visual field I feel he has adequate vision to drive commercially." Mr. Hoover reported that he has driven straight trucks for 18 years, accumulating 270,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark C. Jeffrey

Mr. Jeffrey, 61, has had a central retinal vein occlusion in his right eye since 2005. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion Mr. Mark Jeffrey has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Jeffrey reported that he has driven straight trucks for 35 years, accumulating 8,750 miles and tractor-trailer combinations for 30 years, accumulating 2.1 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Paul J. Jones

Mr. Jones, 45, has had complete loss of vision in his right eye since birth. The best corrected visual acuity in his right eye is No light perception and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "I certify that in my opinion Mr. Jones' vision is sufficient to perform his driving tasks of a commercial vehicle." Mr. Jones reported that he has driven straight trucks for 24 years, accumulating 210,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Pedro G. Limon

Mr. Limon, 39, has had amblyopia and aphakic in his right eye for 35 years. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "In my opinion Mr. Limon has sufficient vision to perform the duties to operate a commercial vehicle safely." Mr. Limon reported that he has driven straight trucks for 6 years, accumulating 280,800 miles. He holds a Class C operator's

license from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William G. Marshall

Mr. Marshall, 56, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "In my medical opinion Mr. William Marshall has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Marshall reported that he has driven straight trucks for 23 years, accumulating 851,000 miles and tractor-trailer combinations for 20 years, accumulating 300,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Timothy S. Moore

Mr. Moore, 35, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/300 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "I believe that Mr. Moore has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Moore reported that he has driven tractor trailer combinations for 4 years, accumulating 200,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kenneth H. Morris

Mr. Morris, 42, has had prosthetic left eye since childhood. The visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "He has sufficient vision to drive a commercial vehicle." Mr. Morris reported that he has driven straight trucks for 18 years, accumulating 72,000 miles, tractor trailer combinations for 18 years, accumulating 72,000 miles, and buses for 3 years, accumulating 9,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Shelby V. Nicholson

Mr. Nicholson, 58, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/100. Following an examination in 2010, his optometrist noted, "It is my medical opinion that visually Mr. Nicholson is more than capable of performing the tasks required by him in operating a commercial vehicle."

Mr. Nicholson reported that he has driven straight trucks for 24 years, accumulating 2 million miles and tractor trailer combinations for 27 years, accumulating 2.7 million miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Tracy J. Omeara

Mr. Omeara, 46, has had dense cataract and retinal damage in his left eye due to an injury sustained 22 years ago. The visual acuity in his right eye is 20/20 and in his left eye, count-finger vision. Following an examination in 2010, his ophthalmologist noted, "In my opinion, Mr. Omeara has adequate vision to perform the driving tasks required to operate a commercial vehicle." Mr. Omeara reported that he has driven tractor trailer combinations for 3 years, accumulating 53,481 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary W. Pope

Mr. Pope, 43, has had complete loss of vision in his left eye due to an infection since childhood. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "In my professional opinion since Gary has had this condition since early childhood, he is very well adapted and functional to drive a commercial vehicle." Mr. Pope reported that he has driven straight trucks for 13 years, accumulating 468,000 miles. He holds a Class R operator's license from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

George D. Ruth

Mr. Ruth, 56, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/200. Following an examination in 2010, his optometrist noted, "Mr. Ruth's vision seems sufficient to continue to operate a commercial vehicle." Mr. Ruth reported that he has driven straight trucks for 35 years, accumulating 1.7 million miles and tractor trailer combinations for 35 years, accumulating 1.7 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Benjamin Stone

Mr. Stone, 38, has had amblyopia in his left eye due to an injury 34 years ago. The visual acuity in his right eye is 20/25 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "In my medical opinion Benjamin Stone has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Stone reported that he has driven straight trucks for 3 years, accumulating 191,400 miles. He holds a Class B CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James H. Wallace, Sr.

Mr. Wallace, 42, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "In my medical opinion, I believe Mr. James Wallace, Sr., has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle." Mr. Wallace reported that he has driven straight trucks for 3 years, accumulating 600,000 miles and tractor trailer combinations for 7 years, accumulating 525,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald C. Wolfe

Mr. Wolfe, 74, has had macular degeneration in his right eye since 1987. The visual acuity in his right eye is 20/400 and in his left eye, 20/30. Following an examination in 2010, his ophthalmologist noted, "I certify that in my medical opinion that he has sufficient vision to continue to perform driving tasks required to operate a commercial vehicle." Mr. Wolfe reported that he has driven straight trucks for 54 years, accumulating 29,700 miles and tractor trailer combinations for 52 years, accumulating 13,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business March 14, 2011. Comments will be available for examination in the

docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: January 31, 2011.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–2983 Filed 2–10–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2011–0018]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 12, 2011.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2011–0018] by any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Flaherty, Program Analyst, National 9–1–1 Program, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Room W44–322, Washington, DC 20590. (202) 366–2705. *laurie.flaherty@dot.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60 day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses. In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Title: National 9–1–1 Profile Database.

OMB Control Number: N/A.

FORM Number: This collection of information uses no standard forms, but does utilize a Web-based, data reporting/collection tool (*https://www.911resourcecenter.org/code/9-1-1ProfileDatabase.aspx*).

Abstract: The 911 Resource Center, funded by a cooperative agreement with NHTSA, is proposing to collect and aggregate information from State level reporting entities that can be used to measure the progress of 9–1–1 authorities across the country in enhancing their existing operations and migrating to—Internet-Protocol-enabled emergency networks. The data will be maintained in a "National 9–1–1 Profile Database." One of the objectives of the National 9–1–1 Program is to develop, collect, and disseminate information concerning practices, procedures, and technology used in the implementation of E–911 services and to support 9–1–1 Public Safety Answering Points (PSAPs) and related State and local agencies for 9–1–1 deployment and operations. The national 9–1–1 profile database can be used to follow the progress of 9–1–1 authorities in enhancing their existing systems and implementing next-generation networks for more advanced systems.

Description of the Need for the Information and Proposed Use of the Information—

The goal of the data collection process is to support a national 9–1–1 profile that will be used to help accurately measure and depict the current status and planned capabilities of 9–1–1 systems across the United States. Evaluations, based upon the data collected, will help draw attention to key roadblocks and solutions in the deployment process and to target possible future activities and resources consistent with the goals of the program. The information in aggregated form will be available to State and local stakeholders in the public safety community.

The information to be collected includes data useful to evaluating the status of 9–1–1 programs across the country, along with their progress of implementing advanced systems and capabilities. The data elements involved

will fall within two major categories: baseline and progress benchmarks.

• "Baseline" data elements reflect the current status and nature of 9–1–1 operations from State to State. These elements are largely descriptive in nature, are intended to provide a general view of existing 9–1–1 services across the country, and are grouped within three categories: administrative, system, and fiscal data.

• "Progress benchmarks" reflect the status of State efforts to implement advanced next generation 9–1–1 systems and capabilities. As titled, these data elements are largely implementation or deployment benchmarks against which progress can be measured. The elements involved are grouped in a logical order of planning, procurement, installation and testing, transition, and operations. Planning through testing elements reflects both State level and sub-State level activity and efforts. Transitional and operational elements specifically represent the latter.

In order to collect information needed to develop and implement effective strategies that meet the Program's goal of providing leadership, coordination, guidance and direction to the enhancement of the Nation's 9–1–1 services, NHTSA proposes to utilize a Web-based, data reporting and collection tool accessible through the Web site: *http://www.911resourcecenter.org.*

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information):

Under this proposed effort, the 9–1–1 Resource Center would specifically request reporting entities to voluntarily collect and annually report the data described above utilizing the described Web-based data collection tool. Reporting entities are State level 9–1–1 program officials, and the data reported will reflect State-level aggregated data. The total number of respondents is identified at fifty-six (56), including the fifty States and the six U.S. Territories of Guam, U.S. Minor Outlying Islands, American Samoa, Mariana Islands, U.S. Virgin Islands, and Puerto Rico.

The above reporting entities will be requested to annually update data relating to their State or territory using the described Web-based tool.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information:

NHTSA estimates that the time required to annually report the data described utilizing the Web-based tool will be three hours (2 hours of preparation, 1 hour of entry to Web site) per reporting entity, for a total of 168 hours for all entities. The respondents would not incur any reporting costs from the information collection beyond the time it takes to gather the information, prepare it for reporting and then populate the Web-based data collection tool. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

Authority: 44 U.S.C. 3506(c)(2)(A); 47 U.S.C. 942.

Issued on: February 8, 2011.

Michael L. Brown,

Acting Associate Administrator, Research and Program Development.

[FR Doc. 2011–3119 Filed 2–10–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0118]

Wheego Electric Cars, Inc.; Grant of Application for Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of grant of petition for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

SUMMARY: This notice grants the petition of Wheego Electric Cars, Inc. (Wheego) for the temporary exemption of its Whip LiFe model from certain advanced air bag requirements of FMVSS No. 208. The basis for the exemption is that the exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably reduce the safety level of that vehicle.

DATES: The exemption is effective immediately, conditioned upon Wheego's submission to NHTSA, at least 30 days prior to the first delivery of the LiFe to a distributor or dealer for sale in the United States, the certification test data and other data in support of the certification of the LiFe's compliance with certain FMVSSs, as discussed in the **SUPPLEMENTARY INFORMATION** section. This exemption remains in effect until February 11, 2013.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–326, Washington, DC 20590. *Telephone:* (202) 366–2992; *Fax:* (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags." [1] The upgrade was designed to meet the twin goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by deploying air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of some air bag designs. This plan also included conducting rulemaking to facilitate the depowering of air bags and conducting an extensive consumer education program to encourage the placement of children in rear seats.

The new requirements were phased in beginning with the 2004 model year. Small volume manufacturers were not subject to the advanced air bag requirements until September 1, 2006.

In recent years, NHTSA has addressed a number of petitions for exemption from the advanced air bag requirements of FMVSS No. 208. The majority of these requests have come from small manufacturers that have petitioned on the basis that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. NHTSA has granted a number of these petitions, usually in situations where the manufacturer is supplying standard air bags in lieu of advanced air bags.[2] In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' response to the agency's rulemaking by providing depowered air bags were successful in

[1] *See* 65 FR 30680 (May 12, 2000).

[2] *See, e.g.,* grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implications of any temporary exemption granted by this agency. In the present case, we are addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of a plug-in electric car. The stated basis of the petition was that requiring compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the advanced air bag requirements. However, after consultation with the petitioner, we have also considered the petition under a different basis—that an exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably lower the safety level of the vehicle.

II. Statutory Basis for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, authorizes the Secretary of Transportation to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority in this section to NHTSA.

NHTSA established 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. A vehicle manufacturer wishing to obtain an exemption from a standard must demonstrate in its application (A) that an exemption would be in the public interest and consistent with the Vehicle Safety Act and (B) that the manufacturer satisfies one of the following four bases for an exemption: (i) Compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith; (ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard; (iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or (iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

Only small manufacturers can obtain a hardship exemption. A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113). In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether another entity also might be deemed a manufacturer of that vehicle and whether the production volumes of each of the two manufacturers should be combined in assessing whether the criterion is met. A second entity might be deemed a manufacturer of a vehicle in a variety of circumstances. For example, there are two manufacturers if one entity produces an incomplete vehicle [3] and another entity then modifies the incomplete vehicle so as to produce a completed vehicle.[4] NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

For an exemption petition to be granted on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle, the petition must include specified information set forth at 49 CFR 555.6(c). The main requirements of that section include: (1) Substantiation that the vehicle is a low-emission vehicle; (2) documentation establishing that a temporary exemption would not unreasonably degrade the safety of a vehicle; (3) substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle; (4) a statement of whether the petitioner intends to conform to the standard at the end of the exemption period; and (5) a statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis," [5] the statute also expressly authorizes the agency to renew an exemption on reapplication. The agency wishes to caution manufacturers that the agency's decision to grant a manufacturer's initial exemption petition in no way predetermines whether the agency will grant a petition for renewal of an initial exemption. The agency does not believe it would be consistent with section 30113 for the agency to grant repeated renewals, since doing so would impart semi-permanent exempted status to the manufacturer. This seems particularly true in the case of exemptions based on developing or evaluating a new vehicle. Accordingly, exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider the public interest, consistency with the Safety Act, generally, as well as other specific matters provided in the statute.

III. Wheego's Petition

Wheego submitted a petition for exemption from certain requirements of FMVSS No. 208, *Occupant Crash Protection,* pursuant to 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* for its LiFe model for a period of three years. Specifically, the petition requested an exemption from paragraphs S14 (including S14.5.2) (advanced air bag requirements), S15 (rigid barrier test requirements using 5th percentile adult female dummies), S16 (rigid barrier test procedure), S17 (offset frontal deformable barrier requirements using 5th percentile adult female dummies), S18 (test procedure for offset frontal deformable barrier), S19 (requirements to provide protection for infants in rear facing and convertible child restraints and car beds), S21 (requirements using 3-year-old child dummies), S23 (requirements using 6-year-old child dummies), S25 (requirements using an out-of-position 5th percentile adult female dummy at the driver position), S26 (procedure for low risk deployment tests of driver air bag), and S27 (option for dynamic automatic suppression system that suppresses the air bag when an occupant is out of position) of FMVSS No. 208.

In further submissions to the agency, Wheego clarified its plans with respect to S14, stating that it will certify its vehicles to comply with the belted 50th percentile male barrier impact test (S14.5.1(a)). Wheego has also since stated that it plans to certify to the unbelted 50th percentile barrier impact test in force prior to September 1, 2006 (S5.1.2(a)) (with the unbelted sled test in S13 being an acceptable option for that requirement).

Although Wheego seeks exemption from S16, S18, S26, and S27, those provisions set forth compliance test

[3] 49 CFR 567.3.

[4] *Ibid.*

[5] 49 U.S.C. 30113(b)(1).

procedures for optional means of compliance. Wheego does not need an exemption from S16, S18, and S26, because those provisions do not set forth requirements with which Wheego must certify compliance. Instead, they set forth the compliance test procedures for the substantive requirements in S15, S17, and S25 respectively. Wheego also does not need an exemption from S27, which sets forth requirements for an optional dynamic automatic suppression system. Accordingly, we have considered Wheego's petition as seeking an exemption from S14 (apart from S14.5.1(a)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208.

The stated basis for Wheego's application is that requiring compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. According to the petition, Wheego is a privately held company incorporated in the State of Delaware, with headquarters in Atlanta, Georgia. Its total motor vehicle production during the 12 months preceding the filing of the petition was 308 vehicles. Wheego indicated that all of these vehicles were all-electric Wheego Whip LSVs (low speed vehicles). In order for a vehicle to qualify as a low speed vehicle under FMVSS No. 500, *Low-Speed Vehicles,* its top speed must not exceed 25 miles per hour.

Wheego states that the LiFe is a zero-emission, two-door, two-seat coupe that uses a lithium iron phosphate battery pack to power a 60 horsepower AC induction electric motor. The LiFe has a high strength steel unibody chassis made by Shijiazhuang ShuangHuan Automobile Co. (ShuangHuan) in China. A similar chassis (minus modifications reportedly made by ShuangHuan to the chassis sold to Wheego) is used by ShuangHuan in manufacturing a passenger car (called the "Noble") with an internal combustion engine for sale in China, Australia, Greece, and other parts of the world outside the United States. Wheego states that, by purchasing and using an existing chassis, it was able to avoid the high cost of developing and manufacturing a brand new vehicle design. Wheego also states that ShuangHuan has developed dual standard air bags for the chassis, but not an advanced air bag system.

Wheego contends that granting an exemption would be in the public interest. Wheego intends the LiFe to be "one of the first affordable electric cars available in the United States." Wheego states that electric vehicles have several benefits, including reducing the nation's reliance on foreign oil and reducing greenhouse gas and other emissions. Wheego also contends that, allowing it to enter the market now would contribute to the development of electric vehicles in general by helping to evaluate the market and performance of electric vehicles with real world experience. Wheego also cites employment opportunities as a benefit.

Wheego intends to produce only a limited number of LiFes in the first three years of production, which it contends would limit the overall impact on motor vehicle safety. In its original petition, Wheego projected that it would sell 550 LiFes in 2010, 1,200 in 2011, 2,400 in 2012, and 5,000 in 2013. Wheego has since indicated that its anticipated production would be approximately 100 vehicles per month throughout the requested exemption period. Thus, the 12-month production total would be approximately 1,200 vehicles. Wheego states that the primary purpose of the LiFe will be as a commuter vehicle because it will have a limited range compared to that of gasoline powered vehicles. The LiFe will have a projected range of 100 miles and will require a minimum of 5 hours to regain a 50 percent charge. Because of the small sales volume and limited range, Wheego states that the number of hours that the LiFes will be on roads will be lower compared to gasoline powered vehicles, thereby reducing the likelihood of a crash.

Wheego contends that compliance with the advanced air bag requirements would cause substantial economic hardship and that Wheego has tried to comply with the standard in good faith. Wheego states that it cannot acquire an off-the-shelf advanced air bag system for the LiFe because an advanced air bag system has never been developed for the chassis used in the LiFe. Wheego states that it does not have the technical or financial resources to develop such a system independently and would have to cancel the development of a passenger car and terminate its operations if it does not obtain the requested exemption.

In October 2009, Wheego engaged J.K. Technologies in Baltimore, Maryland, for help with testing and certification requirements of the FMVSSs. Also in October 2009, Wheego approached TASS Engineering Services and Bosch for help in developing an advanced air bag system for the LiFe. Based upon this consultation, Wheego estimates that an advanced air bag system would cost $3 million and would take 18 months to test and implement. In its original petition, Wheego stated that it intended to spend $1 million in each of 2011, 2012, and 2013, obtained from sales of the LiFe, in an effort to develop a system that will comply with the advanced air bag requirements. Wheego stated that, based on its projected revenues, by the end of the third year of an exemption, Wheego should be able to build cars with advanced air bags at no additional cost. However, Wheego has since indicated that, if their exemption petition is granted, they expect a substantial investment in their business that would allow them to meet the advanced air bag requirements by September 2012.

IV. Notice of Receipt

On August 23, 2010, we published in the **Federal Register** (75 FR 51870) a notice of receipt of Wheego's petition for temporary exemption, and provided an opportunity for public comment. We received one comment, which was from Wheego. It addressed only the issue of sponsorship.

V. Agency Analysis and Decision

In this section, we provide our analysis and decision regarding Wheego's temporary exemption request concerning advanced air bag requirements of FMVSS No. 208.

As discussed below, we are granting Wheego's petition for the LiFe to be exempted, for a period of two years after the date of publication of this notice in the **Federal Register**, from S14 (apart from S14.5.1(a)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(a), Wheego must certify to the unbelted 50th percentile adult male dummy barrier impact test requirement that applied prior to September 1, 2006 (S5.1.2(a)). For purposes of this exemption, the unbelted sled test in S13 is an acceptable option for that requirement. This exemption is further conditioned upon Wheego's submitting to the agency, at least 30 days before the first delivery of the LiFe to a distributor or dealer for sale in the United States, all certification test data, including any objective data, simulation data, engineering analyses, and any other data that forms the basis for Wheego's certification of the LiFe's compliance with the following FMVSSs: FMVSS No. 135, *Light Vehicle Brake Systems;* FMVSS No. 138, *Tire Pressure Monitoring Systems;* FMVSS No. 208, *Occupant Crash Protection;*[6] FMVSS No. 214, *Side Impact Protection;* and FMVSS No. 216, *Roof Crush Resistance.*

[6] Excluding the sections of FMVSS No. 208 from which Wheego would be exempt.

The agency's rationale for this decision is as follows:

a. Change in Basis for Exemption

As discussed above and in the notice of receipt, Wheego's application for an exemption from the advanced air bag requirements of FMVSS No. 208 was based upon an argument that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. However, upon further review of Wheego's application and after discussions with Wheego, the agency and Wheego agreed that its request for an exemption would instead be considered on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle. Wheego stated that it would not object to NHTSA considering the petition on this basis, if necessary to grant the petition. In meetings with the agency and in post petition correspondence, Wheego has submitted additional information to the agency.[7]

There are two reasons the agency has considered Wheego's petition under a different basis than stated in the application. First, as discussed in the notice of receipt, there is a question of Wheego's eligibility to apply for an economic hardship exemption. A manufacturer is eligible to apply for an economic hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113). In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second entity also might be deemed a manufacturer of that vehicle. We indicated in the notice of receipt that another manufacturer, ShuangHuan, produces and supplies the unibody chassis of the LiFe. The chassis supplied by ShuangHuan is similar to the chassis of its Noble model. We sought comment on whether ShuangHuan might also be considered a manufacturer of the LiFe, and Wheego's comment addresses that issue. We believe that there is reason to regard ShuangHuan as a manufacturer of the LiFe. However, considering Wheego's petition on the basis of facilitating the development of a low-emission vehicle moots the question of Wheego's eligibility for a hardship exemption.

Second, although there are different limitations on exemptions based on the development of a low-emission vehicle, Wheego's petition and subsequently provided information together meet all of those requirements except for one—the length of the exemption sought. Wheego has revised its production targets such that not more than 2,500 exempted vehicles would be sold in the United States in any 12-month period for which an exemption may be granted. Wheego has provided information substantiating that it is producing a low-emission vehicle, documentation establishing that a temporary exemption would not unreasonably degrade the safety of the vehicle, substantiation that a temporary exemption would facilitate the development and field evaluation of the vehicle, and a statement that Wheego intends to comply with all of the requirements of FMVSS No. 208 at the end of the exemption period. As for the duration of the exemption, Wheego sought a three-year hardship exemption. However, exemptions for the development of a low-emission motor vehicle are limited to a two-year duration. Accepting Wheego's assertion that it would take 18 months to develop an advanced air bag system and allowing additional time for initiating that process and retooling, we believe that a maximum two-year extension is warranted based upon Wheego's application.

Based on the foregoing, we have considered Wheego's petition for an exemption from the advanced air bag requirements of FMVSS No. 208 on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle, notwithstanding the fact that Wheego sought its exemption based upon economic hardship. We address below Wheego's satisfaction of the criteria for such an exemption.

b. Eligibility

NHTSA believes that the requested exemption would make the development or field evaluation of a low-emission motor vehicle easier. Wheego has stated that the LiFe will be one of the first affordable electric cars available in the United States. Wheego has also stated that allowing them into the market by granting the exemption will expand consumer choices and contribute to the development of electric cars in general by helping to evaluate the market for electric vehicles. We agree that an exemption would permit Wheego to offer a lower priced electric vehicle and allow for the evaluation of the market for these vehicles.

NHTSA also concludes that the granting of this exemption would not unreasonably lower the safety or impact protection level of the vehicle. Of particular note, the LiFe will have air bags and will be certified to meet the pre-advanced air bag requirements of FMVSS No. 208. Moreover, with the exception of the advanced air bag requirements, it will be required to be certified to meet all other requirements contained in the applicable FMVSSs.

Furthermore, we have also considered child safety issues related to the exemption requested by Wheego. With respect to transporting children and infants, Wheego noted that the LiFe is equipped with an on-off switch for its passenger air bag. Wheego stated that dealers will instruct purchasers on the use of the on-off switch and that information also would be contained in the owner's manual. The passenger seat is also equipped with a child seat LATCH system.[8] The LiFe will also have the permanently affixed "sun visor air bag warning label" and a removable "warning label on the dashboard" that NHTSA developed/requires for vehicles without advanced air bags. Thus, parents and others will be able to transport children in the passenger seat of the LiFe without exposing them to the risks of air bags, and the vehicles will have warning labels concerning the risks of air bags. This helps minimize any safety risks resulting from the vehicle not meeting requirements for advanced air bags.

We also observe that only a limited number of vehicles would be produced under the temporary exemption. Manufacturers granted exemptions on the basis of furthering the development of low-emission vehicles are limited to selling 2,500 exempted vehicles in any 12-month period. Given that this is a two-year exemption, no more than 5,000 vehicles could be built that lack the advanced air bag protection of FMVSS No. 208. Wheego has indicated that it anticipates producing approximately 100 vehicles per month throughout the duration of the exemption period for a total of approximately 2,400 vehicles.

Based upon the above discussion concerning safety, we believe that any impact on safety from granting the exemption would be negligible, and that Wheego has satisfied the eligibility criteria for an exemption for the development or field evaluation of a low-emission motor vehicle.

[7] A copy of all of Wheego's submissions and a summary of the meeting are available in the docket. See Docket No. NHTSA–2010–0118.

[8] Lower Anchors and Tethers for Children (LATCH) Restraint System.

c. Public Interest Considerations

NHTSA has traditionally found that the public interest is served by affording consumers a wider variety of motor vehicles, by encouraging the development of fuel-efficient and alternative-energy vehicles, and providing additional employment opportunities. We believe that all three of these public interest considerations would be served by granting Wheego's petition.

Given the relatively small number of vehicles that will be produced during the two-year exemption and the above discussion, we believe that the requested exemption would have a negligible effect on motor vehicle safety.

d. Conditions

Pursuant to 49 U.S.C. 30113(b)(1), the Secretary, acting through the NHTSA, may grant temporary exemptions "on terms the Secretary considers appropriate." Through the course of Wheego's application process, issues have been raised that warrant the attachment of a condition to this temporary exemption.

As stated above, the advanced air bag requirements were adopted, in part, to minimize the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes. Wheego's initial petition made no mention of any features in the vehicle that would minimize the risks posed by air bags to infants, children, and other occupants in low-speed crashes. Only after a notice of receipt was published did Wheego inform the agency of its actions to address these risks. Similarly, and as we stated in the notice of receipt, Wheego's petition provided little to explain its relationship with ShuangHuan. It was only through Wheego's comment on the notice of receipt and its subsequent petitions that we learned of the modifications to the Noble chassis made by Wheego for the LiFe.

To assist the agency in learning more about Wheego's efforts to make design changes to the Noble to meet all of the FMVSSs, we are conditioning the grant of exemption on Wheego's submitting to NHTSA's Office of Vehicle Safety Compliance all certification test data, including any objective data, simulation data, engineering analyses, and any other data that forms the basis for Wheego's certification of the LiFe's compliance with the following FMVSSs: FMVSS No. 135, *Light Vehicle Brake Systems;* FMVSS No. 138, *Tire Pressure Monitoring Systems;* FMVSS No. 208, *Occupant Crash Protection;*[9] FMVSS No. 214, *Side Impact Protection;* and FMVSS No. 216, *Roof Crush Resistance.* We are requiring that this data be submitted at least 30 days prior to Wheego delivering a LiFe to a distributor or dealer for sale in the United States. If this data is not submitted to NHTSA, Wheego cannot offer vehicles for sale under this exemption. NHTSA's evaluation of this data will help the Administrator determine if the temporary exemption continues to be in the public interest. We note that 49 CFR 555.8(d)(1) allows the Administrator to revoke a temporary exemption if it is no longer consistent with the public interest and the objectives of the Safety Act.

Although Wheego seeks a three-year exemption, we explained above that only a two-year exemption is available under the low-emission motor vehicle exemption. In addition, we explained above our reasons why a three-year exemption is not warranted. NHTSA is considering generally whether it is in the public interest to continue to grant petitions seeking temporary exemptions from the advanced air bag requirements and, to the extent such petitions are granted, what plans and countermeasures to protect child and infant occupants, short of advanced air bags, should be expected. In contrast to the initial years after the advanced air bag requirements went into effect, low volume manufacturers have access to advanced air bag technology. In light of this reconsideration, we reiterate that the exemption we are granting to Wheego is temporary. Based upon Wheego's commitment to having FMVSS No. 208 compliant advanced air bags in the LiFe by the end of the exemption period, we would not view a petition to renew this temporary extension favorably, absent a substantial change in Wheego's circumstances.

e. Labels

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted vehicle must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable FMVSSs in effect on the date of manufacture "except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. ___." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations in which an exemption covers part but not all of a FMVSS. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number would be of little use to consumers, since they would not know the subject of those specific provisions.[10] For these reasons, we believe the two labels should read in relevant part, "except for the Advanced Air Bag Requirements of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

f. Decision

In consideration of the foregoing, we conclude that granting the requested exemption from the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* would facilitate the field evaluation or development of a low-emission vehicle, and would not unreasonably lower the safety or impact protection level of that vehicle. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. § 30113(b)(3)(B)(iii), Wheego is granted NHTSA Temporary Exemption No. EX 11–01, from S14 (apart from S14.5.1(a)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(a), Wheego must certify to the unbelted 50th percentile adult male dummy barrier impact test requirement that applied prior to September 1, 2006 (S5.1.2(a)). For purposes of this

[9] Excluding the sections of FMVSS No. 208 from which Wheego would be exempt.

[10] We recognize that, in prior grants of exemptions from the advanced air bag requirements, the agency has required the manufacturer to list the exempted paragraphs by number on the label.

exemption, the unbelted sled test in S13 is an acceptable option for that requirement.

The exemption is for the LiFe model and shall remain in effect until two years after the date on which notice of this decision is published in the **Federal Register**, as indicated in the **DATES** section of this document. However, this grant of exemption is conditioned on Wheego's providing to NHTSA, at least 30 days before delivering a vehicle to a distributor or dealer for sale, all certification test data, including any objective data, simulation data, engineering analyses, and any other data that forms the basis for Wheego's certification of the LiFe's compliance with FMVSS Nos. 135, 138, 208, 214, and 216.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: February 8, 2011.

David L. Strickland,

Administrator.

[FR Doc. 2011–3130 Filed 2–10–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 34554 (Sub-No. 14)]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

Pursuant to a modified written trackage rights agreement dated January 18, 2011, BNSF Railway Company (BNSF) has agreed to extend the December 18, 2010 expiration date of the local trackage rights granted to the Union Pacific Railroad Company (UP) [1] over a BNSF line of railroad extending from BNSF milepost 579.3 near Mill Creek, Okla., to BNSF milepost 631.1 near Joe Junction, Tex., a distance of approximately 52 miles.[2]

The transaction is scheduled to be consummated on or after February 26, 2011, the effective date of the exemption (30 days after the exemption is filed).

The purpose of this transaction is to modify the temporary trackage rights exempted in Docket No. FD 34554 (Sub-No. 12) to further extend the expiration date to on or about December 18, 2011. The modified trackage rights will permit UP to continue to move loaded and empty ballast trains for use in its maintenance-of-way projects.

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by February 18, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 34554 (Sub-No. 14), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Elisa B. Davies, General Attorney, Union Pacific Railroad Company, 1400 Douglas Street, Mail Stop 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 7, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–3012 Filed 2–10–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35462]

Union Pacific Railroad Company—Trackage Rights Exemption—California Northern Railroad Co.

Pursuant to a written trackage rights agreement dated July 1, 2010, California Northern Railroad Co. (CFNR) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over approximately 1.8 miles of rail line between milepost 83.0 (Tracy, Cal.) and milepost 84.8 (Lyoth, Cal.), on CFNR's Los Banos Subdivision.

The transaction may be consummated on or after February 24, 2011, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the transaction is to enable UP to move trains between its Oakland, Cal., Subdivision and its Tracy Industrial Lead.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by February 17, 2011 (at least 7 days before the exemption becomes effective). An original and 10 copies of all pleadings, referring to Docket No. FD 35462, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must

[1] UP submits that the trackage rights being granted here are only temporary rights but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See R.R. Consolidation Procedures,* 6 S.T.B. 910 (2003). Therefore, UP concurrently has filed a petition for partial revocation of this exemption in Docket No. FD 34554 (Sub-No. 15), *Union Pacific Railroad—Temporary Trackage Rights Exemption—BNSF Railway,* wherein UP requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about December 18, 2011, as provided in the parties' agreement. That petition will be addressed by the Board in a separate decision.

[2] The trackage rights were originally granted in *Union Pacific Railroad—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway,* FD 34554 (STB served Oct. 7, 2004). Subsequently, the parties filed notices of exemption several times based on their agreements to extend expiration dates of the same trackage rights. *See* FD 34554 (Sub-No. 2) (STB served February 11, 2005); FD 34554 (Sub-No. 4) (STB served March 3, 2006); FD 34554 (Sub-No. 6) (STB served January 12, 2007); FD 34554 (Sub-No. 8) (STB served January 4, 2008); FD 34554 (Sub-No. 10) (STB served January 8, 2009); and FD 34554 (Sub-No. 12) (STB served December 31, 2009). Because the original and subsequent trackage rights notices were filed under the class exemption at 49 CFR 1180.2(d)(7), under which trackage rights normally remain effective indefinitely, in each instance the Board granted partial revocation of the class exemption to permit the authorized trackage rights to expire. *See* FD 34554 (Sub-No. 1) (STB served November 24, 2004); FD 34554 (Sub-No. 3) (STB served March 25, 2005); FD 34554 (Sub-No. 5) (STB served March 23, 2006); FD 34554 (Sub-No. 7) (STB served March 13, 2007); FD 34554 (Sub-No. 9) (STB served March 20, 2008); FD 34554 (Sub-No. 11) (STB served March 11, 2009); and FD 34554 (Sub-No. 13) (STB served March 15, 2010). At the time of the extension authorized in Docket No. FD 34554 (Sub-No. 12), the parties anticipated that the authority to allow the rights to expire would be exercised by December 18, 2010. However, the parties filed on January 27, 2011 in Docket No. FD 34554 (Sub-No. 14) their most recent notice of exemption to allow the trackage rights to be extended to on or about December 18, 2011, which we are addressing here.

be served on Elisa Davies, 1400 Douglas St., STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 8, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–3090 Filed 2–10–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 7, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before March 14, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1631.

Type of Review: Extension without change to a currently approved collection.

Title: REG–209619–93 (Final) Escrow Funds and Other Similar Funds.

Abstract: Section 468B(g) requires that income earned on escrow accounts, settlement funds, and similar funds be subject to current taxation. This section authorizes the Secretary to issue regulations providing for the current taxation of these accounts and funds as grantor trusts or otherwise. The proposed regulations would amend the final regulations for qualified settlement funds (QFSs) and would provide new rules for qualified escrows and qualified trusts used in deferred section 1031 exchanges; pre-closing escrows; contingent at-closing escrows; and disputed ownership funds.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,720 hours.

OMB Number: 1545–1891.

Type of Review: Extension without change to a currently approved collection.

Title: Form 13560, HCTC Health Plan Administrator (HPA) Return of Funds Form.

Form: 13560.

Abstract: Form 13560 is completed by Health Plan Administrators (HPAs) and accompanies a return of funds in order to ensure proper handling. This form serves as supporting documentations for any funds returned by an HPA and clarifies where the payment should be applied and why it is being sent.

Respondents: State, Local, and Tribal governments.

Estimated Total Burden Hours: 50 hours.

OMB Number: 1545–2189.

Type of Review: Extension without change to a currently approved collection.

Title: Form-8946 PTIN Supplemental Application for Foreign Persons without a Social Security Number.

Form: 8946.

Abstract: Paid preparers that are nonresident aliens and cannot get a social security number will need to establish their identity prior to getting a Preparer Tax Identification Number (PTIN). Form 8946 is being created to assist that population with establishing their identity while applying for a PTIN.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 201,200 hours.

OMB Number: 1545–1743.

Type of Review: Extension without change to a currently approved collection.

Title: Summary of Archer MSAs.

Form: 8851.

Abstract: This form will be used by the IRS to determine whether numerical limits set forth in section 220(j)(1) have been exceeded.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,540,000 hours.

OMB Number: 1545–1339.

Type of Review: Extension without change to a currently approved collection.

Title: IA–33–92 (Final) Information Reporting for Reimbursements of Interest on Qualified Mortgages.

Abstract: To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require the reporting on Form 1098 of reimbursements of interest overcharged in a prior year. Only businesses that receive mortgage interest in the course of that business are affected by this reporting requirement.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1361.

Type of Review: Extension without change to a currently approved collection.

Title: PS–89–91 (TD 8622—Final) Exports of Chemicals that Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer.

Abstract: Section 4681 imposes a tax on ozone-depleting chemicals sold or used by a manufacturer or importer thereof. Section 4682 provides exemptions and reduced rates of tax for certain uses of ozone-depleting chemicals. This regulation provides reporting and recordkeeping rules.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 201 hours.

OMB Number: 1545–1629.

Type of Review: Revision of a currently approved collection.

Title: Paid Preparer's Earned Income Credit Checklist.

Form: 8867.

Abstract: Form 8867 helps preparers meet the due diligence requirements of Code section 6695(g), which was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997. Paid preparers of Federal income tax returns or claims for refund involving the earned income credit (EIC) must meet the due diligence requirements in determining if the taxpayer is eligible for the EIC and the amount of the credit. Failure to do so could result in a $100 penalty for each failure. Completion of Form 8867 is one of the due diligence requirements.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 17,824,793 hours.

OMB Number: 1545–2078.

Type of Review: Extension without change to a currently approved collection.

Title: Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction.

Form: 8886–T.

Abstract: Certain tax-exempt entities are required to file Form 8886–T to disclose information for each prohibited tax shelter transaction to which the entity was a party.

Respondents: Private sector: Not-for-profit institutions.

Estimated Total Burden Hours: 70,395 hours.

OMB Number: 1545–1890.

Type of Review: Extension without change to a currently approved collection.

Title: Revenue Procedure 2008–67, Extension of the Amortization Period (Rev. Proc. 2004–44, superseded).

Abstract: This revenue procedure describes the process for obtaining an extension of the amortization period for the minimum funding standards set forth in section 412(e) of the Code.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,500 hours.

OMB Number: 1545–1895.

Type of Review: Extension without change to a currently approved collection.

Title: Revenue Procedure 2004–46, Relief from Late GST Allocation.

Abstract: This revenue procedure provides guidance to certain taxpayers in order to obtain an automatic extension of time to make an allocation of the generation-skipping transfer tax exemption. Rather than requesting a private letter ruling, the taxpayer may file certain documents directly with the Cincinnati Service Center to obtain relief.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 350 hours.

OMB Number: 1545–1317.

Type of Review: Extension without change to a currently approved collection.

Title: INTL–79–91 (8573) T.D. Information Returns Required of United States Persons with Respect to Certain Foreign Corporations.

Abstract: These regulations amend the Income Tax Regulations under sections 6035, 6038, and 6046 of the Internal Revenue Code of 1986. These amendments are to clarify the requirements of sections 1.6035–1, 1.6038–2, and 1.6046–1 of the Income Tax Regulations relating to Form 5471. These regulations amend and liberalize certain requirements regarding the format in which information already specified in the statute and regulation is presented for purposes of Form 5471. The regulations provide that financial statement information be expressed in U.S. dollars translated according to U.S. generally accepted accounting principles and permit functional currency reporting of certain items.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1341.

Type of Review: Extension without change to a currently approved collection.

Title: EE–43–92 (Final) Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions from Qualified Plans.

Abstract: These regulations provide rules implementing the provisions of the Unemployment Compensation Amendments (Pub. L. 102–318) requiring 20 percent income tax withholding upon certain distributions from qualified pension plans or tax-sheltered annuities.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 2,129,669 hours.

OMB Number: 1545–2073.

Type of Review: Extension without change to a currently approved collection.

Title: Revenue Procedure 2007–37, Substitute Mortality Tables for single Employer Defined Benefit Plans.

Abstract: This revenue procedure describes the process for obtaining a letter ruling as to the acceptability of substitute mortality tables under section 430(h)(3)(C) of the Code.

Respondents: Private sector: Not-for-profit institutions and Farms.

Estimated Total Burden Hours: 25,400 hours.

OMB Number: 1545–1904.

Type of Review: Extension without change to a currently approved collection.

Title: Revenue Procedure 2004–56, Model 457 Plan Provisions.

Abstract: This revenue procedure contains model amendments to be used by section 457(b) plans (deferred compensation plans) of State or local governments.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 41,040 hours.

OMB Number: 1545–1360.

Type of Review: Extension without change to a currently approved collection.

Title: PS–102–88 (T.D. 8612) Income, Gift and Estate Tax.

Abstract: This regulation concerns the availability of the gift and estate tax marital deduction when the donee spouse or the surviving spouse is not a United States citizen. The regulation provides guidance to individuals or fiduciaries: (1) For making a qualified domestic trust election on the estate tax return of a decedent whose surviving spouse is not a United States citizen in order that the estate may obtain the marital deduction, and (2) for filing the annual returns that such an election may require.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 6,150 hours.

OMB Number: 1545–2072.

Type of Review: Extension without change to a currently approved collection.

Title: Revenue Procedure 2007–35—Statistical Sampling for purposes of Section 199.

Abstract: The revenue procedure provides for determining when statistical sampling may be used for purposes of section 199, which provides a deduction for income attributable to domestic production activities, and establishes acceptable statistical sampling methodologies. The collection of information in the proposed revenue procedure involves a recordkeeping requirement for taxpayer that use statistical sampling under section 199.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,400 hours.

OMB Number: 1545–1898.

Type of Review: Extension without change to a currently approved collection.

Title: Revenue Procedure 2004–47, Relief From Ruling Process For Making Late Reverse QTIP Election.

Abstract: This revenue procedure provides alternative relief for taxpayers who failed to make a reverse QTIP election on an estate tax return. Instead of requesting a private letter ruling and paying the accompanying user fee the taxpayer may file certain documents with the Cincinnati Service Center directly to request relief.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 54 hours.

OMB Number: 1545–1594.

Type of Review: Extension without change to a currently approved collection.

Title: REG–251520–96 (TD 8785—Final) Classification of Certain Transactions Involving Computer Programs.

Abstract: The information requested in regulation Section 1.861–18(k) is necessary for the Commissioner to determine whether a taxpayer properly is requesting to change its method of accounting.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–2094.

Type of Review: Extension without change to a currently approved collection.

Title: RP–2007–XX (RP–155430–05), Accelerated Appeals Procedure.

Abstract: This revenue procedure establishes the Accelerated Appeals Procedure for taxpayers who are issued a proposed assessment of penalty under section 6707 of 6707A of the Internal Revenue Code. These taxpayers may request that the Office of Appeals review and consider resolution of the proposed assessment. The information to be collected under the revenue procedure is needed to initiate, and will be used to conduct, the Accelerated Appeals Procedure.

Respondents: Individuals and Housholds.

Estimated Total Burden Hours: 430 hours.

OMB Number: 1545–0901.

Type of Review: Extension without change to a currently approved collection.

Title: Mortgage Interest Statement.

Form: 1098.

Abstract: Form 1098 is used to report $600 or more of mortgage interest received from an individual in the course of the mortgagor's trade or business.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 8,038,699 hours.

OMB Number: 1545–2188.

Type of Review: Extension without change to a currently approved collection.

Title: Form 8945—PTIN Supplemental Application For U.S. Citizens without a Social Security Number.

Form: 8945.

Abstract: Most individuals applying for a preparer tax identification number (PTIN) will have a social security number (SSN), which will be used to help establish their identity. However, there exists a population of US residents that have a conscientious religious objection to obtaining a social security card and do not have social security numbers. Form-8945 is being created to assist that population in establishing their identity while applying for a PTIN. Form-8945 will establish a vehicle for establishing their identity in lieu of providing a social security number.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 5,415 hours.

OMB Number: 1545–2091.

Type of Review: Extension without change to a currently approved collection.

Title: REG–147290–05 (TD 9374 -final)—Nuclear Decommissioning Costs.

Abstract: Statutory changes permit taxpayers that have been subject to limitations on contributions to qualified nuclear decommissioning funds in previous years to make a contribution to the fund of the previously-excluded amount. The temporary regulation provides guidance concerning the calculation of the amount of the contribution and the manner of making the contribution.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,500 hours.

OMB Number: 1545–1205.

Type of Review: Revision of a currently approved collection.

Title: Form 8826–Disabled Access Credit.

Form: 8826.

Abstract: Code section 44 allows eligible small businesses to claim a non-refundable income tax credit of 50% of the amount of eligible access expenditures for any tax year that exceed $250 but do not exceed $10,250. Form 8826 figures the credit and the tax limit.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 89,027 hours.

OMB Number: 1545–1343.

Type of Review: Extension without change to a currently approved collection.

Title: PS–100–88(TD8540) (Final) Valuation Tables.

Abstract: The regulations require individuals or fiduciaries to report information on Forms 706 and 709 in connection with the valuation of an annuity, an interest for life or a term of years, or a remainder or reversionary interest.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 4,500 hours.

OMB Number: 1545–2074.

Type of Review: Extension without change to a currently approved collection.

Title: Rev Proc 2007–69 Credit for Production of Low Sulfur Diesel Fuel.

Abstract: The revenue procedure informs small business refiners how to obtain the certification required under section 45H (f) of the Internal Revenue Code.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 75 hours.

Bureau Clearance Officer: Allan Hopkins, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 622–6665.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2011–3133 Filed 2–10–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 7, 2011.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before March 14, 2011 to be assured of consideration.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0117.

Type of Review: Revision of a currently approved collection.

Title: Resolution for Transactions Involving Treasury Securities.

Form: PDF 1010.

Abstract: Completed by an official of an organization that is designated to act on behalf of the organization.

Respondents: Private sector: Business or other for-profit.

Estimated Total Burden Hours: 235 hours.

Bureau Clearance Officer: Bruce Sharp, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106; (304) 480–8112.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–3134 Filed 2–10–11; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–K; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice and request for comments.

SUMMARY: This document contains a correction to a notice and request for comments that was published in the **Federal Register** on Wednesday, January 26, 2011 at 76 FR 4744 inviting the general public and other Federal Agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)) and as part of its continuing effort to reduce paperwork and respondent burden by the Department of the Treasury. Currently, the IRS is soliciting comments concerning Form 1099–K, Merchant Card and Third Party Payments.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ralph Terry at (202) 622–8144, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Ralph.M.Terry@irs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The notice and request for comments that is the subject of the correction is required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Need for Correction

As published, the notice and request for comments for Proposed Collection; Comment Request for Form 1099–K contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice and request for comments for Proposed Collection; Comment Request for Form 1099–K, which was the subject of FR Doc. 2011–1547, is corrected as follows:

On page 4745, column 1, under the caption "**SUPPLEMENTARY INFORMATION:**", lines 5 thru 25, the language "*Abstract:* This is a new form is in response to section 102 of Public Law 111–147, the Hiring Incentives to Restore Employment (HIRE) Act. The form reflects a new non-Code general business credit for the retention of certain qualified individuals hired in 2010. The credit is first available for an employer's income tax return with a tax year ending after 3/18/10 where new hired employees hired after 2/3/10 and before 1/1/11 worked not less 52 consecutive weeks where wages paid in last 26 weeks of employment were at least 80% of wages paid in first 26 weeks. These requirements are to be met before employer is legible for the lesser $1,000 or 6.2% of wages paid by the employer to the employee during the 52 consecutive week period of each qualified retained worker." is removed and replaced with the language "*Abstract:* This is a new form is in response to section 3091(a) of Public Law 110–289, the Housing Assistance Tax Act of 2008 (Div. C of the housing and economic Recovery Act of 2010). The form reflects payments made in settlement of merchant card and third party network transactions for purchases of goods and/or services made with merchant cards and through third party networks." in its place.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2011–3043 Filed 2–10–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing their United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending December 31, 2010.

Last name	First name	Middle name/initials
ABE	ATSUSHI	
ABEHSERA	ALBERT	
ABEHSERA	AUDREY	
ABEHSERA	JACQUES	
ABEHSERA	MONIQUE	
ABEHSERA	MURIEL	
ADDY	GILLIAN	
ADDY	PETER	D.
ADVANI	SUNAINA	
AFFONSO	ANA	C
AFFONSO	LUIZ	GUILHERME
AGATI	JEAN-PHILLIPPE	
AHMED	JAVED	
AKOI	RAIDEV	SINGH
ALBRIGHT	PHILIP	RUSSELL
AL-DOAISS	SAMOH	ANISS
ALFONSO	JOSEPH	NICOLA
ALLEN	ANTHONY	SIMON
AL-SABAH	HAMAD	MUBARAK
AL-SABAH	NOOR	MUBARAK
AL-TURKI	ALI	ABDULAZIZ
ANDERSON	GWENDOLYN	I.
ANG	DAVID	JIA-QIANG
ANG	JUSTIN	ZHE MIN
ANGKASA	STANLEY	

Last name	First name	Middle name/initials
ARBER	JOHN	WILLIAM
ARJANTO	ANGELIIQUE	
ARYANTO	FERDINAND	
ARYANTO	LAURA	
ASHDOWN-HOWARD	CAROILINE	SARAH
ASLUND	ANNA	
ASLUND	ROBERT	
AVAKIAN	EDDIE	HAIG
AVILES	EVA	JENNY
BAILEY	JANE	
BAILEY	PETER	JOHN
BAKHTIAR	SOHAILA	HELENE
BALCH	GARY	LEN
BAROCCHI	NICOLAS	CARLO
BEANLAND	DAVID	J
BEILLARD	EMMANUEL	
BEILLARD	NATHALIE	
BELL	DEAN	R
BELL	GARRY	E
BELL	MARLENE	
BERG	LAURIE	ADA
BEYELER	MIRJAM	
BIRTLES	NICHOLAS	
BLAKEMAN	IAN	
BLAKEMAN	MARIA	
BONDE	PEDER	
BOOGAARD	ROBERT	
BOURGUIGNON	JACQUES	A. M.
BRANHAM	MICHAEL	DEE
BREGULLA	STEVEN	LOTHAR
BROCHEN	ALEXANDRA	COLETTE MARIE
BROWNE-SWINBURNE	ELIZA	JANE
BRYNE	SILJE	BJARKAAS
BUCHEN-OSMOND	CORNELIA	
BURCKHARDT	DANIEL	DIETER
CEFALI	FRANK	ANTHONY
CHA	EUNJIN	
CHAN	SONYA	CHUI SHAN
CHANDRAN	VIVIAN	PEARL JOHNSTON
CHANRAI	KAILASH	HARKISHIN
CHAU	KATRINA	LING T.
CHEN	SHERYL	FRANCES
CHENG	GARY	
CHIANG	CHUN-I	
CHIEN	CHIH	SHANG
CHOISNEL	ELENA	
CHOISNEL	GERARD	
CHONG	YANG	SUN
CHOU	ERIC	CHENG WEI
CHOW	THERESA	LYNN
CHUN	RICHARD	KILWHAN
CLARK	JEMMA	
COHEN	ERICA	
COLLOFF	GILLIAN	MARY
COLLOFF	IAN	GREGORY
CONNOR	PHILLIPS	M
CONNORS	KEVIN	PATRICK
COYLE	BRENDAN	H
D'ALVIELLA	EUGENIE	AIMEE GOBLET
DARWIN	ANGELA	MARY BRUCE
DAVID	CARY	RICHARD
DAVID-PELLERIN	STEPHANIE	
DE CANDIA	FABRIZIO	
DE MELO	JAIME	A P
DELETAILLE	SEBASTIEN	JAMES SPENCER
DELLOYE	BRUCE	CHRISTIAN
DEROLD	CHRISTIAN	
DESCHLER	VANESSA	LAURA
DEUTSCH	IRA	S
DONEGAN	ALEXANDRA	ELEANOR
DONEGAN	PATRICK	LOUIS
DONOHUE	MAURA	JOAN
DURAN	CLARA	MARIE BROCHEN
EIKENS	BERNHARD	

Last name	First name	Middle name/initials
EIKENS	SABINE	
EISENBIEGLER	PRATIWI	ADININGRUM
ELSEN	MARIA	ANTOINETTE
FACON	DOMINIQUE	B.
FAIRMAN	GARY	L
FARRAR	CHIHO	
FERDON	NONA	MARIE
FIRMENICH	FREDERIC	ALEXANDRE
FITZJOHN	DAVID	ROY
FITZJOHN	JACQUELINE	
FLUCKIGER	PETER	HENRI
FORD	JUDITH	MARIANNE
FOX	EVA	HELENA OSCARIUS
FRAZER	GRANT	S
FRAZER	LINDA	C
FRENKEL	SHARON	
FREY	ELIZABETH	U
FUNG	PASCALE	N
GIBSON	MATTHEW	CHARLES
GIBSON	SARAH	CLAIRE
GIDRON	GILLA	MEZZAN
GINDIN	DMITRY	
GLOVER	SIMON	WILLIAM
GNAEDIG	GREGOR	
GOH	JUSTIN	TENG HUI
GOTE-VAN ZANTEN	MAUD	A
GOTTLER	CHRISTINE	
GREGG	MYRIAM	PAMELA
GRIFFITHS	ROBERT	WILLIAM
GROHS	MARY	LOUISE
GUERLAIN	MARIE	
HA	PATRICIA	
HABOLDT	BOB	P
HAJEK	LINDA	ANETTE
HANSEN	PAUL	ROBERT
HARDWICK III	CHARLES	CHEEVER
HARRIS	JANE	VELDA
HARSONO	SUDARGO	
HARTLEY-ALLEN	JANE	ANTONIA
HAUSKA	STEPHAN	MARC
HEDDLE	MARGARET	A
HEE	ZHENG	XUN
HERWIG	THOMAS	ALBERT
HERZOG	KATHERINE	B
HEWITT	KEVIN	MAXWELL SCOTT
HIDLEY	DAWNETTE	
HIDLEY	THOMAS	LEROY
HILDEBRAND	BARBARA	M
HILTZ	ANGELA	L
HIRSCH	GEORGINA	ELIZABETH RUTH
HO	JONATHAN	CHUN WAI
HO	NATHANIEL	WEI-XIAN
HO	ROSEMARY	WEI-LIN
HO	SAMMY	KIN WAN
HOLMES	PAULA	GUNNARD
HOOI	BRYAN	KUEN-YEW
HORVATH	ALEXANDER	S
HOWELL JR	WARREN	RAYMOND
HUANG	DAVID	
HUANG	JEFFREY	
HUM	DANIEL	SHI-AN
HYLTON	NOEL	
HYONG	JAMES	WOO
ILLING	ALEXANDER	GEORGE ERNEST
INGRAHAM	CYNTHIA	
JACKSON	GRACE	LINNET
JENSEN	DANIEL	MICHAEL
JENSEN	JANICE	MARILYN
JIAO	JIAN	PING
JINN	M SHYUE	GANG
JOARISTI	PEDRO	CELESTINO
JONSSON	FREDRIK	K
JUN	LIESBETH	M
JUNN	HAAN	SUK

Last name	First name	Middle name/initials
KARDOUCHE	RAMSEY	KHALIL
KARIBIAN	GEORGE	VAHAK
KARIM	HAKIM	
KELLER	GORDON	
KENNEDY	MARION	
KIM	AARON	KYONGHAN
KIM	GRACE	HAEJOO
KIM	PETER	HYOYU
KIM	SEOK	BONG
KINGSBURY	PTER	THOMAS
KINGSLEY	JENNIFER	
KLAINGUTI	MICHAEL	ROBERT
KLAUS HOSSEINI	MARGRIT	
KNAUF	KARL	KONSTANTIN
KNOEPFEL	SYLVIA	E
KO	LEE-CHING	
KOH	JARED	SHANG YING
KOHLI	VIJAY	KUMAR
KOMORI	LEONARD	
KOMORI	MASUMI	
KOPP	KAREN	
KRUISHEER	MARGARET	JACOBA
KRZYZAK	JANINA	
KUBO	DAISUKE	
LABBE	BEATRICE	ANDERSON
LAMPRECHT	JOHANNES	
LASKY	ISABEL	
LAU	CHUN	SHUN
LAU	KENDRICK	PU HONG
LAUDER	SANDRA	E
LAWRENCE	KENNETH	MARK
LAYOUS	SALIM	S
LAZAAR	BASHAR	KAMEL
LEDSOME	MARK	
LEE	CHEI	REN
LEE	KEYOON	JENIFFER
LEE	PAUL	
LEE	SANDRA	CHAN-KEN
LEE	TIEN	SHENG
LEE	WAN	KYUN
LEE	WON	YOUNG
LEE	YONG	IN
LEVENS	NIGEL	R
LEVIE	CLAIRE	
LEVY	GRANT	D
LI	XIAO	YANG
LIM	EMILY	YINGHUI
LIM	JOSHUA	ZHI QIANG
LIM	MEI	SHI
LIM	SOON	HEE
LIN	ALEXANDER	LANSON
LOPEZ	MANUEL	IGNACIO
LOW	ELBERT	YI-CHUEN
LUI	ANNE	W
LUNG	JUSTIN	CHI YUEN
LUNTZ	DAVID	JOHN
MA	XIAOHONG	
MAINI	GERALDINE	RAINIER WALDEN
MAIRA	ARUN	NATH
MARCACCINI	GAIA	LAETITIA
MARCHANDISE	DONALD	
MARRS SR	DAVID	MICHAEL
MARTIN	JOHN	HOWARD
MARTIN	MARIANO	
MASEFIELD	RICHARD	C
MCBAIN	EMILY	ANN
MCDONALD	PAUL	FRANCIS
MCMASTER JR	RALPH	E
MEK	AUSTIN	REN FONG
METHVEN	CHARLOTTE	ELIZABETH
MIKESELL	RUSSELL	WALLACE
MIMMS	DAVID	DEWAYNE
MORAN	MICHAEL	D
MORIN	NADJA	DOMINIQUE

Last name	First name	Middle name/initials
MORISSETTE	VALERE	
MOTWANI	SANJAY	
MPAMBARA	LYDIE	
MUELLER	VOLKER	G
NAGATA	SHIGERU	
NARAYAN	PANKAJ	VIKRAMAJIT
NARUSE	NORIYOSHI	
NAVEDA	LUCRECIA	BOTIN SANZ DE SAUTUOLA
NAYAR	SANJAY	
NICHOLS	MARK	EDWARD
NICHOLSON-LAILEY	MARY	CAMILLA
NOREKE	ERIK	
ODONNELL	JOHN	MICHAEL
OKAMURA	JUSTIN	YOSHIAKI
OKUN	ALEXANDER	
OON	JIN	TEIK
O'RORKE	NICHOLAS	
OSMOND	CHARLES	B
OSORIO	ALBERT	
OSULLIVAN	HERMY	
OUW	MINGTSE	CHEN
OVERBOSCH	PETER	
OVERBOSCH-FIERLIER	RENEE	
PAHISSON	REX	HENRIK
PAPPADAKIS	ANTHONY	NICHOLAS
PARKIN	RICHARD	J
PAULL	JAMES	EDWARD ANDREW
PAULSEN	JEAN-FREDERIC	
PETERSON	JANE	KATHRYN
PFAFFINGER	MARKUS	RICHARD OLIVER
PFANDER	MARGARET	
PHILIPP	HARALD	
PHILIPP	KATHLEEN	GLYNN
PIEDRA	ROBERTO	
PITTAS	PHILIP	M
PONS	JEAN	C
POPESCU	ANDREEA	
POPESCU	STELA	
POSTMA	ALEXANDER	J.
POWER	JOHN	K
POWER	PATRICK	
PRABHU	VENKATESH	RAMCHANDRA
PRICE	PRESCOTT	EDWIN
PROBIN	GEORGE	HENRY
QUADERER	RICHARD	JOHANN
RAGGENBASS-METAYER	MARY	LYNN
RAMSDEN	JANE	EUSTICE
RAO	SANJEEVANI	
RATNER	ROGER	MITCHELL
REINER	MARK	THEODORE
REUBEN JR	DAVID	ROBERT
RHODE	DAVID	ALAN OTTO
RHODE	LOUISE	EMILY
ROBERT	MATHILDE	BERENICE
ROBINSON	JOHN	
ROBINSON	KATHLEEN	
ROCKWELL	SCOTT	ZACHARY
ROSS	FRANCISCO	G
ROUX	ROMULO	A
ROZWADOWSKI	JEAN	F
SALVADE	NEVINE	
SAMUDA	JACQUELINE	
SARASIN	ALEXANDRA	MARIE RIVERS
SARASIN	CHRISTOPHE	ALAIN
SARGENT	STEVEN	A
SASAKI	KENICHI	
SCHIBLER	TAL	
SCHMID	DANIEL	MAX
SCHREIBER	MIRIAM	
SCHUBERT	ULLRICH	
SCHWEITZER	ROGER	WAYNE
SEAMAN	THOMAS	WYLIE
SEIDLER	CHRISTOPHER	FREDERICK

Last name	First name	Middle name/initials
SETTERGREN	DAVID	MICHAEL
SHALOM	ISAAC	MAYER
SHAW	LOIS	COLIEN
SHEARING	PAUL	C
SHEIKH	BUSHRA	RAFIQUE
SIEWERT	PATRICK	THOMAS
SILVSTEDT	VICTORIA	K.
SIMS	CALVIN	JOHNSTON
SINGER	SUSAN	AMY
SINIK	JOHN	R
SKAAR	JOHAN	T
SLAUGHTER	CARLA	CHRISTINE MUNOZ
SOK	PATRICK	JONG-WOOK
SONG	CHI	HO
SONNAD	RAVISHANKAR	G
SPENDER	MARO	GORKY
SPRINGEL	SHARON	FERDON
STANTON-MEIJER	BERNADETTE	
STRIJBOS	MARC	
SUGANUMA	GRACE	HIROKO
SZE	MARIA	
TAGLIENTI	ALESSANDRO	
TAIMI	TOMOKO	
TECSON	EMILY	
TEONG	HANIONG	
TERJESEN	NILS	TRYGVE
THORKELSSON	SIGURBJORN	
THORPE	JULIE	F
THORPE	ROBERT	C
TOMPKINS	NATHAN	CAMBRIDGE
TONG	WAI	MAY
TOURANACHUN	VIROON	
TREVES	ALESSANDRO	GIULIANO
TREVES	ARIANE	MELANIO
TSE	THERESA	S.H.
TSENG	SEN	YANN
UCHIYAMA	KOJI	MARK
UM	LAWRENCE	
VACHON	JEAN-ROCH	
VAN CALOEN	LOUIS	DORSAN
VERBEEK	BERNARDUS	HENDRIK
VERBEEK	GERARDA	EVERARDA
VERME	MARIA	
VIRJI	AZAD	
VON KLEYDORFF	URSULA	
WAGNER	JASON	REED
WAIBEL	MARIETHERES	KARIN
WALDVOGEL	MURIEL	
WALKER	JOSEPH	M.
WANG	ANYING	
WANG	SU	CHIN-PI
WANG	XIUWEN	
WAWRA	IRENE	MAY
WEINER	JONATHON	
WEISELFISH	NIMROD	
WELSH	CHRISTIN	GUDRUN
WHITE	WILLIAM	CONRAD
WILKINSON	LESLIE	
WILLIAMS	JOHN	FRANCIS
WILLIAMS	MICHAEL	MCCORMICK
WILLIAMS	SANDRA	KELLY
WILLIAMS	CHRISTOPHER	K
WOLFF	JANET	
WONG	ALEXANDRA	LORRAINE KOK YUN
WONG	ALICIA	LUCIENNE KOK ON
WONG	KWOK	KWONG
WOO	JANET	MEI-PEI
WU	CHUNYUAN	
XU	KE	
YE	SHA	
YENNY	JACQUES	G.
YOON	JUNG	SUK
YOSHIDA	HITOSHI	
YU	ALLEN	B. H.

Last name	First name	Middle name/initials
YUE	CHRISTINA	KUEN-NA KWOK
YUE	RUDY	YEE SHEUNG
ZEMEK	PATRICK	WILLIAM
GOGULSKI	MICHAEL	JUDE (expatriated 12/2008)

Dated: January 21, 2011.

Angie Kaminski,

Manager Team 103, Examinations Operations—Philadelphia Compliance Services.

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Part II

Department of Agriculture

Rural Business-Cooperative Service
Rural Utilities Service

7 CFR Part 4288
Repowering Assistance Payments to Eligible Biorefineries; Interim Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4288

RIN 0570–AA74

Repowering Assistance Payments to Eligible Biorefineries

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Rural Business-Cooperative Service (Agency) is establishing the Repowering Assistance Program authorized under the Food, Conservation, and Energy Act of 2008. Under this Program, the Agency will make payments to eligible biorefineries to encourage the use of renewable biomass as a replacement fuel source for fossil fuels used to provide process heat or power in the operation of eligible biorefineries.

DATES: This interim rule is effective March 14, 2011. Written comments on this interim rule must be received on or before April 12, 2011.

ADDRESSES: You may submit comments on this interim rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Contact Frederick Petok, USDA Rural Development, Business Programs Energy Division, 1400 Independence Avenue, SW., Room 6870, STOP 3225, Washington, DC 20250–3225. Telephone: (202) 690–0784. E-mail: *frederick.petok@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been reviewed under Executive Order (EO) 12866 and has been determined to be significant by the Office of Management and Budget. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted a benefit-cost analysis to fulfill the requirements of EO 12866. In the benefit-cost analysis, the Agency quantified the cost of the Repowering Assistance Program, but did not quantify its benefits. Costs were quantified for the burden of the Program to the public and to the Federal government, but its economic impacts were not quantified. Qualitative discussions of potential impacts of the Program on jobs, the environment, and energy are presented in the analysis. While unable to quantify the benefits associated with this rulemaking, the Agency believes that the overall effect of the rule will be beneficial.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) of Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This interim rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act/ Environmental Impact Statement

These renewable energy programs under Title IX of the 2008 Farm Bill have been operated on an interim basis through the issuance of a Notice of Contract Proposal (NOCP) or Notice of Funds Availability (NOFA). During this initial round of applications, the Agency conducted National Environmental Policy Act (NEPA) reviews on each individual application for funding. No significant environmental impacts were reported. Taken collectively, the applications show no potential for significant adverse cumulative effects.

The Agency has prepared programmatic environmental assessments (PEA), pursuant to 7 CFR part 1940, subpart G, analyzing the environmental effects to air, water, and biotic resources; land use; historic and cultural resources, and greenhouse gas emissions affected by the Repowering Assistance Program. The purpose of the PEA is to assess the overall environmental impacts of the programs related to the Congressional goals of advancing biofuels production for the purposes of energy independence and greenhouse gas emission reductions. The impact analyses are national in scope but draw upon site-specific data from advanced biofuel facilities funded under Sections 9003 (Biorefinery Assistance Guaranteed Loans) and 9004 as reasonable assumptions for the types of facilities, feedstocks, and impacts likely to be funded under this rulemaking for FY 2010–2012. Site-specific NEPA documents prepared for those facilities funded under Sections 9003 and 9004 in FY 2008 and/or 2009 were utilized, as well, to forecast likely impacts under the interim rule. Qualitative analyses of likely programmatic impacts beyond the FY 2012 program expiration date are provided, as appropriate. The draft PEA was made available to the public for comment on the USDA Rural Business-Cooperative Service's Web site in May, 2010. No comments were received on the draft PEA and the Agency has issued a Finding of No Significant Impact (FONSI) for the two programs that is available on the Agency Web site.

Executive Order 12988, Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988. In accordance with the rules: (1) All State and local laws and regulations that are in conflict with these rules will be preempted; (2) no retroactive effect will be given the rules; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture's National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

It has been determined, under Executive Order 13132 that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action will not have an economically significant impact on a substantial number of small entities. Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the Program. Small entity applicants will not be affected to a greater extent than large entity applicants.

The entities affected by the Program are biorefineries. Regardless of whether the participating biorefinery is a small or large business, the average cost to a biorefinery to participate in the Repowering Assistance Program is estimated to be approximately $16,400. Because the major factor in determining whether a biorefinery, small or large, will participate in this program is likely to be whether the biorefinery has the capital, or access to the capital, for the repowering project, the Agency does not believe that the cost of applying and participating will dissuade a small business from seeking to participate in this program. For example, this average cost represents less than 0.5 percent of the proposed rule maximum of $5 million that a biorefinery could receive under this program. Further, biorefineries are expected to realize a reduction in the costs to power their operations once the repowering project is in place. Thus, participating biorefineries will be able to recoup this expense, although small biorefineries are likely to take longer to recoup the expense because they are likely to have smaller power usage than large biorefineries.

This regulation only affects biorefineries that choose to participate in the programs. Lastly, the program is open to all eligible producers, regardless of their size.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The regulatory impact analysis conducted for this rule meets the requirements of Executive Order No. 13211, which states that an agency undertaking regulatory actions related to energy supply, distribution, or use is to prepare a Statement of Energy Effects. The analysis did not find that the rule will have any adverse impacts on energy supply, distribution or use.

Executive Order 12372, Intergovernmental Review of Federal Programs

This Program is not subject to Executive Order 12372 because the Program is not listed as a covered program on the Intergovernmental Consultation list.

Executive Order 13175

USDA will undertake, within 6 months after this rule becomes effective, a series of regulation Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The policies contained in this rule would not have Tribal implications that preempt Tribal law.

Programs Affected

The Repowering Assistance Program is listed in the Catalog of Federal Domestic Assistance under Number 10.866.

Paperwork Reduction Act

The information collection requirements contained in the Notice of Funding Availability for the Section 9004 Repowering Assistance Payments to Eligible Biorefineries program published on June 12, 2009, were approved by the Office of Management and Budget (OMB) under emergency clearance procedures and assigned OMB Control Number 0570–0058. In accordance with the Paperwork Reduction Act of 1995, the Agency is now seeking standard OMB approval of the reporting requirements contained in this interim rule. In the publication of the proposed rule on April 16, 2010, the Agency solicited comments on the estimated burden. The Agency received no comments in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, the Agency will publish a rule in the **Federal Register**.

Title: Repowering Assistance.

OMB Number: 0570–NEW.

Type of Request: New collection.

Abstract: The collection of information is vital to the Agency to make decisions regarding the eligibility of biorefineries to participate in this program, to ensure compliance with the provisions of this proposed rule and to ensure that the payments are made to eligible biorefineries.

Biorefineries seeking funding under this program will have to submit applications that include specified information, a feasibility study, certifications, and agreements. Once a biorefinery has been accepted into the repowering program and the repowering project has been completed, the biorefinery must submit reports documenting their renewable energy production. Participating biorefineries must keep records, and make them available to USDA upon request, documenting the ongoing displacement

of fossil fuel usage resulting from the repowering project. These requirements are stated in the interim rule.

The estimated information collection burden hours has increased from the proposed rule by 8,728 hours, from 4,390 to 13,118 for the interim rule. This increase is attributable to the Agency's reassessing the potential number of applicants who would be interested in applying for this Program. At proposal, the burden estimate was based on assuming that only facilities that primarily produced liquid transportation biofuels would apply. The rule, however, allows facilities producing biofuels and biobased products from renewable biomass to apply. This increases the potential pool of applicants significantly.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 23 hours per response.

Respondents: Biofuel Producers.

Estimated Number of Respondents: 67.

Estimated Number of Responses per Respondent: 9.

Estimated Number of Responses: 581.

Estimated Total Annual Burden on Respondents: 13,118.

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

I. Background

Rural Development administers a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing leadership, infrastructure, venture capital, and technical support that can support rural communities, helping them to prosper.

To achieve its mission, Rural Development provides financial support (including direct loans, grants, loan guarantees, and direct payments) and technical assistance to help enhance the quality of life and provide support for economic development in rural areas. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) contains several sections under which Rural Development provides financial assistance for the production and use of biofuels.

The Repowering Assistance Program interim rule addresses Section 9004 of the 2008 Farm Bill, which authorizes the Secretary of Agriculture to "* * * carry out a program to encourage biorefineries in existence on the date of enactment of the Food, Conservation, and Energy Act of 2008, to replace fossil fuels used to produce heat or power to operate the biorefineries. * * *" by making payments to assist in the installation of new systems that use renewable biomass.

On April 16, 2010 (75 FR 20073), the Agency published a proposed rule for Repowering Assistance Payments to Eligible Biorefineries. Comments were requested on the proposed rule, which are summarized in Section III of this preamble. Most of the proposed rule's provisions have been carried forward into subpart A of this interim rule. Changes to the proposed rule are summarized in Section II of this preamble.

Interim Rule. USDA Rural Development is issuing this regulation as an interim rule, effective March 14, 2011. All provisions of this regulation are adopted on an interim final basis, are subject to a 60-day comment period, and will remain in effect until the Agency adopts the final rule.

II. Summary of Changes to the Proposed Rules

This section presents changes from the April 16, 2010 proposed rule. Most of the changes were the result of the Agency's consideration of public comments on the proposed rules. Some changes, however, are being made to clarify proposed provisions. Unless otherwise indicated, rule citations refer to those in this interim rule. Significant changes made to the proposed rule for the Repowering Assistance Program include:

1. The citizenship requirement as an applicant eligibility requirement was removed. In addition, the term "immediate family" was deleted because the term was only used in the context of the citizenship requirements.

2. The requirement that a biorefinery must be located in a rural area was removed as an eligibility criterion, and has been replaced with a scoring criterion that awards points if the biorefinery is located in a rural area.

3. The payment provisions of the rule were revised to allow participating biorefineries to request and receive reimbursement payments for eligible project costs no more often than monthly during the construction of the repowering project. Up to 90 percent of the total award may be dispersed prior to completion of the repowering project with the remaining 10 percent to be paid upon successful completion of the project.

4. The name of the methodology for measuring the cost effectiveness of a project was revised from "return on investment (ROI)" to "Simple Payback."

5. The scoring for the percentage of reduction of fossil fuel was modified by adding a provision that deducts 5 points when any of the fossil fuel being replaced is natural gas.

6. The renewable biomass scoring criterion was revised by decreasing the points awarded from 10 to 5 (in order to provide points for the new scoring criterion of rural area location) and by changing the proposed requirement that an applicant demonstrate 100 percent control over its feedstock for a period of 3 years to the requirement that the applicant demonstrate at the time of application that it has on site available access to biomass or enforceable third party commitments to supply biomass for the repowering project for at least 3 years.

7. The applicant eligibility criteria were revised to require that successful applicants must be awarded at least minimum points for cost-effectiveness and for percentage of reduction of fossil fuel use under § 4288.21(b).

8. The scoring for "cost effectiveness" was revised to add a fourth level to the estimated simple payback period. For applicants projecting a simple payback period of between 6 and 10 years, the maximum points to be awarded was changed from 0 points to 5 points. This change allows applicants with a projected payback period of up to 10 years to meet the minimum criteria for applicant eligibility, as discussed in item 6.

9. The definitions of "eligible renewable biomass" and "feedstock unit" were deleted as these terms are no longer used in the rule.

10. In addition to providing information on the biofuel production as part of the application contents, information is now required for any biobased product produced at the facility.

11. The Agency removed the requirement to provide receipts for drop shipments of and use of renewable biomass from the application content requirements under § 4288.23(a)(5)(iii).

12. The Agency has added a requirement to submit annual reports for the first 3 years after completion of the repowering project. These reports must include documentation regarding the usage and production of energy at the biorefinery during the previous year, including both the previous and current

fossil fuel load and the renewable biomass energy production.

13. The Agency has added a provision giving it the right to disqualify payments made to a biorefinery if, upon completion of the repowering project, the biorefinery fails to reduce its fossil fuel consumption, produce energy from renewal biomass, or otherwise operate as described in its Agency approved application.

14. A new section (§ 4288.26) was added such that an entity that submitted an application for payment to the Agency under this program prior to the effective date of this rule will have their payments made and serviced in accordance with the provisions specified in this subpart.

III. Summary of Comments and Responses

The proposed rule was published in the **Federal Register** on April 16, 2010 (75 FR 20073), with a 60-day comment period that ended June 15, 2010. Comments were received from 8 commenters yielding 30 individual comments, which have been grouped into similar categories. Commenters included biorefinery owner/operators, Rural Development personnel, trade associations, and individuals. As a result of some of the comments, the Agency made changes in the rule. The Agency sincerely appreciates the time and effort of all commenters. Responses to the comments on the proposed rule are discussed below.

Eligibility Requirements

Comment: One commenter suggests the proposed eligibility requirements remain open to ethanol biorefineries to be able to use any process stream that would be capable of generating a renewable biogas to replace fossil fuel related energy usage. The commenter states that process streams typically considered for biogas generation are the whole stillage, thin stillage, or syrup streams and that these streams contain renewable biomass at various solids concentrations that could be used in biogas generation technologies.

Response: Ethanol biorefineries are eligible under the Repowering Assistance program. The byproducts from the production of ethanol, whole stillage, thin stillage, or syrup streams are eligible biomass which can be used to replace fossil fuels.

Scoring Criteria

Comment: One commenter states that the scoring criteria are good. The commenter further states that the criteria promote projects that have a major repowering impact on the facility, give preference to technologies that can have an immediate/near-term impact, and credit companies that have a firm handle on the biomass supply aspect.

Response: The scoring criteria have remained substantially the same since the inception of this program. The Agency agrees with the commenter that they have worked well. However, based on experience with the first round of applications, the Agency believes that improvements can be made.

The revised scoring criteria are not substantially different from those in the Notice of Funding Availability (2010 NOFA) published in the **Federal Register** on May 6, 2010. The scoring criteria have been revised to better effect the program's purpose, and to encourage the use of biomass to replace fossil fuels.

For cost effectiveness, a fourth level was added to the scoring for the estimated simple payback period. For applicants projecting a simple payback period of between 6 and 10 years, the maximum points to be awarded was changed from 0 points to 5 points and for applicants projecting a simple payback period of 10 years or more, no points would be awarded. This change allows applicants with a projected payback period of up to 10 years to be awarded points and, thus, meet the minimum criteria for applicant eligibility.

In addition, a provision was added to the percentage of reduction of fossil fuel use scoring criterion to deduct 5 points when any of the fossil fuel being replaced is natural gas. As discussed below, this provision was added to in recognition of the greater emission reductions to be achieved under this program when renewable biomass is used to replace coal compared to natural gas.

Lastly, a new scoring criterion was added that awards 5 points to biorefineries located in a rural area. This scoring criterion replaces the proposed rule's eligibility criterion that the biorefinery be located in a rural area in order to be eligible for the program.

Payment Rate and Terms

Comment: One commenter states that most qualifying projects will likely exceed the $10 million threshold. Based on the anticipated amount of fossil fuel replaced by such projects, it appears the maximum award level will never be reached under the current payout system proposed. The commenter recommends increasing the initial payment amount received and/or increasing the amount per fossil fuel MMBTU replaced so that the maximum award level may be reached. The commenter provided an example where 50 percent or $2.5 million of the maximum award of the proposed rule's $5 million cap could be included in the first payment with payments of $1.00 per MMBTU replaced. The commenter states that under this payment structure the intended maximum award level should be achieved within 3 years after operation. To further ensure the award level is reached, an allowance can be made to extend the payment term for longer than 3 years or until the award level is reached. The commenter also proposes payments be extended 3 years or otherwise determined from the beginning date of biogas production not the award date as there could be a significant amount of time before production begins due to project permitting and construction.

The commenter further states that, at current payment levels and economic parameters, there seems to be no incentive for larger repowering projects at ethanol biorefineries. Repowering projects will be downsized from their potential size to make the economics favorable when considering the present payment structure of only 3 years of payments and the proposed rule's $5 million maximum award that appears will never be realized for some projects. The commenter recommends higher award amounts be considered to allow the economic analysis for larger projects be favorable enough to encourage even more reduction in fossil fuel usage. The commenter also requests that any potential changes in payment structure that further encourages completion projects be retroactive. This will help fulfill the intent of the program and payment structure to reach the current maximum award levels of 50 percent of the project up to the proposed rule's $5 million maximum award.

Response: The purpose of the Repowering Program is to incentivize the switch to renewable biomass fuels, not to be the major source of project funding. There is a relatively small amount of money available in this program given the capital cost of the projects. The Agency wanted to maximize the number of award recipients while still providing a meaningful financial incentive. While the proposed rule's $5 million cap would have achieved this objective, the Agency has determined that it is better for the Repowering Program to determine the cap each year because the funding available for the program could change in the future. Therefore, the Agency will announce in a **Federal Register** notice the maximum award for the Repowering Program each year.

The Agency has revised the payment structure to provide reimbursement payments for eligible project costs during the construction phase of the repowering project. Payments will be made no more often than monthly and participating biorefineries must submit a request for payment with proper documentation of the incurred costs to be considered for payment. The Agency has determined that this payment structure will better enable biorefineries to obtain financing for repowering projects.

The commenter's reference to a $10 million threshold is incorrect. There is no cap on the cost of projects eligible for the Repowering Program. The cap will apply to the amount awarded to individual applicants.

Comment: Another commenter states that the $0.50/MMBTU production payment with 20 percent project cost share after completion of the project does not share enough financial burden/risk in today's economy and bank financing scarcity. The commenter states that project financing, not technology, is the show stopper on building capital intensive repowering projects and that a more appropriate approach might be a simple, low interest Federal loan to finance the project with 50 percent loan forgiveness after a demonstration of system performance. The commenter states that, under such an approach, the owner will be motivated to operate the repowering equipment to achieve a return on the investment and make payments on the loan balance.

Response: The Agency acknowledges the burden on the applicant seeking credit to fund projects, and has revised the payment method. However, the Repowering Assistance rule implements the terms of Title IX of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246) which provides for payments to biorefineries based upon the extent of the replacement of fossil fuels with renewable biomass and the cost effectiveness of the renewable biomass system. The statute does not provide for a loan program. As noted above, the purpose of the Repowering Program is to incentivize the switch to renewable biomass fuels, not to be the major source of project funding.

Payment Amount Alignment

Comment: One commenter states that, based on the current estimated fossil fuel reduction and the capital costs likely needed for such reduction, the payment amount should be increased in order to reach the incentive levels defined as the maximum award level in the proposed program. The commenter states that the potential for up to 100 percent fossil fuel reduction exists at many ethanol biorefineries, but to achieve that level or very high levels of reduction the amount of capital needed in relation to the amount of the current incentives would unlikely provide the necessary payback or return on investment needed to move the larger projects forward at this time. The commenter states that a thorough economic analysis would need to be completed to determine the necessary incentive level to achieve the necessary return on investment to complete the larger project scenarios.

Response: The purpose of the Repowering Program is to incentivize the switch to renewable biomass fuels, not to be the major source of project funding. There is a relatively small amount of money available in this program given the capital cost of the projects. The Agency wanted to maximize the number of award recipients while still providing a meaningful financial incentive. As noted in a previous response, because funding for the Repowering Program could change in the future, the Agency has determined that it is better to determine the cap each year and will announce the cap in an annual **Federal Register** notice. Therefore, the Agency has revised the rule accordingly. In addition, the Agency revised the payment method to address commenters' concerns about biofineries having to fully fund a project. Payments will now be made during the construction phase of a project.

Citizenship Requirements

Comment: One commenter states that funding should be carefully restricted to promote domestic owners efforts to reduce fossil fuel use. The commenter states that domestic derived energy needs to have domestic owners to deepen the roots of domestic energy security and promote the movement (and pride) by domestic companies to take ownership of the movement to reduce greenhouse gas (GHG) emissions.

One commenter states that USDA's citizenship requirements are hurting rural America. The commenter believes the policy is delaying the Administration's ability to reach its economic goals for rural America and energy independence goals for the country. The citizenship status of the applicant should not be an eligibility requirement of a facility as it has no effect on the program goal of encouraging the development of commercial scale biorefineries that produce advanced biofuels. The commenter states that the rural economic development potential resulting from the local construction and operation of a biorefinery is substantial and these facilities use local feedstocks and employ U.S. workers. Therefore, the ability for a biorefinery to provide substantial local economic development opportunities is directly related to the location of the facility, not the citizenship of the owner.

The commenter further states that biorefineries need government grants, loans and loan guarantees to attract investors who understand green investment and that investors who understand a green investment framework are often foreign, where the clean technology investment framework is readily understood. The commenter states that, in the age of a global economy, this citizenship requirement is impractical and ineffective and it inhibits the purpose of the program to incentivize private equity investment in the sector.

The commenter also states that, as a regulatory matter, a 51 percent determination of domestic investors is untenable. An investor's domicile often cannot be discerned as foreign or domestic. A successful, ready to scale biochemical company is usually funded by a number of sources, both foreign and domestic, often made up of venture funds with investment from around the world, funds of funds, and independent investors alike. To discern whether or not the fund that owns a fund, that is invested in a particular portfolio company has 51 percent U.S. ownership, is not only impractical, it is impossible. The commenter states that, as green technology companies struggle to find funding from U.S. and foreign investors alike, the U.S. government clings to an outmoded policy that limits the substantial investment incentives of grants, loans and loan guarantees that will bring the U.S. green economy to scale.

Another commenter supports the position of the previous commenter and adds that the U.S. clean tech sector will need $10 trillion of capital in the next ten years if we expect to reach climate change goals. The commenter states that this sector struggles to shift from research and development to large-scale deployment in an uncertain economic and regulatory environment. Private equity investors readily recognize the investment risk of bringing these technologies across the commercialization gap. Many U.S. private equity investors are simply unwilling to take on the burden of helping green tech companies to cross into full-scale commercialization without the same regulatory certainty

that exists today in China and Europe. The commenter also added that U.S. equity investment incentives, already limited in scope by government programs, are cut down further by a 10 percent reduction in the capital costs of new technology deployed on foreign soil (*i.e.,* the Middle East, China, Malaysia). In addition, as technology deployment costs are lower overseas, foreign governments have gone far and beyond U.S. government commitments to clean technology. The China Development Bank has allocated $11.7 billion for solar production alone over the next ten years with regulatory certainty in place for the next ten years. These are the competitive realities of the clean tech sector on a global scale.

One commenter states that the proposed "citizenship requirement" discriminates in favor of some U.S. companies and workers while disadvantaging other U.S. companies and workers. Under the proposed test of at least 50 percent domestic ownership, numerous U.S.-incorporated companies would be excluded from participation. As currently drafted, significant USDA partners would be excluded. Such companies employ tens of thousands of American workers in research, production and manufacturing facilities throughout the United States.

The commenter states that restricting certain U.S.-incorporated companies and their American workers from access to the program undermines U.S. goals of job creation and undermines the effectiveness of the program in its goal of encouraging the use of renewable biomass as a replacement fuel source for fossil fuels. The important goals laid out by President Obama in his May 5th Presidential Directive—to increase America's energy independence and spur rural economic development while encouraging production of the next generation of biofuels—are unlikely to be achieved without allowing U.S. subsidiaries, some of the most innovative and successful companies in the world, to fully participate.

The commenter states that U.S. subsidiaries can make important contributions to the USDA and their participation would be of significant benefit to the Rural Business-Cooperative Service and to the United States. The Department of Energy's Advanced Research Project Agency-Energy (ARPA–E) recognized the benefits of such participation when it lifted similar eligibility requirements in December 2009. ARPA–E now fully permits entities incorporated in the United States to apply for funding, regardless of whether they are ultimately foreign-owned or U.S.-owned. The commenter urges similar equal treatment by the Department and equal access for U.S. subsidiaries to the Repowering Assistance Payments to Eligible Biorefineries program.

The commenter also states that the proposed "citizenship requirement" calls into question the U.S. commitment to a nondiscriminatory environment for foreign investment, and invites similar protectionist retribution from other countries. Setting aside any questions the restrictions raise under U.S. international agreements, they are also inconsistent with the longstanding and explicit U.S. policy to encourage foreign investment in the United States and accord nondiscriminatory treatment. The commenter further states that the proposed rule invites discrimination against U.S. companies abroad, which is exactly what President Obama and the other G20 Leaders have pledged to avoid through their commitment to "promote global trade and investment and reject protectionism."

Response: The Agency has reconsidered the citizenship requirement and has decided to eliminate this requirement from the rule. The Agency agrees that the beneficial impacts of the program will be at the local level regardless of ownership.

Rural Area Limitation

Comment: One commenter requests that USDA expand the boundaries that define the location population to define a city as a populous of over 500,000 to 1,000,000 persons versus 50,000 persons. The commenter explains that they are not qualified to apply for any USDA funding programs (grants or loans) because their facility is located in an area that encompasses the City of Erie (population about 102,036) and its outlining areas, even though they have low population. The commenter's facility has the versatility to run on various feedstocks from non-vegetable oils to animal fats to agricultural feedstocks such as soy. It is also located on Lake Erie where it has access to shipping, two interconnected railroads (CSX and Norfolk Southern), I–90 and I–79. Thus, it can easily bring in feedstock and ship out finished biodiesel. If they could be deemed located in an applicable area then they could apply for USDA funding and build on relationships with local/domestic farm institutions.

Two commenters caution against defining "Rural Area" with too much restriction, potentially disqualifying ideal sites for biorefineries that would, in fact, meet the program goals and increase economic opportunity in rural communities, but may be located in areas that do not fit the program definition. The commenters explain that, for a biorefinery, the cost of feedstock can typically represent 80 percent of the total cost of finished product. As a general rule, a majority of the feedstock will inherently come from the rural community, and be produced/collected/harvested by a local labor force. Similarly construction and operation workforces will be predominantly local. The rural economic development potential resulting from a biorefinery is substantial. One advantage of advanced biofuels is that they can be produced all over the country utilizing multiple feedstocks. Projects should not be evaluated negatively on one of the advanced biofuels industry's greatest assets, flexibility. Offering eligibility to facilities in non-rural communities is critical to the success of the program goals and the advanced biofuels industry. Restricting the location of these facilities is not necessary to maintain the spirit of enhancing rural development and the geographic diversity of advanced biofuels production. More flexibility of site selection, not less, should be installed in these programs.

The commenters further state that having a consistent, cost competitive regional supply of feedstock is key to the success of any project. Non-rural plants that use agricultural feedstocks will most certainly rely on the surrounding rural communities to produce, harvest, store, and handle feedstock needs. With feedstock cost representing the largest operational cost of a biorefinery, this in turn means that most of what the plant spends goes to the rural community in paying for that feedstock. This should demonstrate that the biorefinery does not need to be in a rural area to fulfill program goals. Excluding plants that are not in rural areas denies the supporting rural community significant opportunity.

Another commenter disagrees with the rural area proposal because the Repowering Assistance section in the Farm Bill does not restrict applicants to only those in rural areas. "Repowering Assistance", by its terms, applies to any biorefinery, regardless of location. Further, this proposed restriction would narrow the pool of eligible applicants beyond Congressional intent. In so doing, the rural restriction will reduce the overall effectiveness of the program. The commenter states that when Congress authorized the Repowering Assistance program and established the eligibility requirements, it did not limit the Repowering Assistance program to

only biorefineries located in rural areas. This rural restriction is not supported in either the Manager's Report or the legislation. The authorizing legislation very clearly states eligibility includes "any biorefinery that meets the requirements of this section." The statute's sole discussion of "eligibility" is the following:

Eligibility—To be eligible to receive a payment under this section, a biorefinery shall demonstrate to the Secretary that the renewable biomass system of the biorefinery is feasible based on an independent feasibility study that takes into account the economic, technical and environmental aspects of the system.

The commenter states that an example of a similarly clear Congressional rural restriction may be found under Section 9007, the Rural Energy for America Program (REAP). The eligible recipients for REAP are "agricultural producers and rural small businesses." The second part, "rural small businesses," clearly limits eligible businesses to only those in rural areas. As REAP shows, Congress knows how to include a rural restriction when it wants to do so.

Notably, the mission for the USDA Rural Business-Cooperative Service can be served without a rural restriction, and without conflicting with public policy goals. When facilities in non-rural areas use biomass—whether as a feedstock to produce final products or as fuel—they increase demand for materials produced mostly in rural areas. When public investments build a larger bioeconomy, rural residents benefit from increased rural income from biomass sales and wages. Prohibiting participation by non-rural biorefineries would have the effect of reducing benefits to rural citizens.

The commenter states that by restricting the pool of eligible applicants, the proposal violates the plain language of the statutory authorization, and elevates agency interest over clear Federal policy goals.

Response: The Agency has reconsidered the proposed rural area requirement. The beneficial impacts of the program will generally be in rural areas even if the biorefinery is located in an area that does not meet the proposed rural area definition, because biomass production is expected to occur largely in rural areas and, thus, rural economies will benefit from the increased use of biomass. The Agency is, therefore, removing the proposed rural area requirement from the rule as an eligibility criterion. However, as has been stated previously, the biorefinery must be located in a rural area in order to receive 5 points under the revised scoring criteria.

Timeframe for Control of Feedstock

Comment: Two commenters oppose the scoring criteria that reward maximum points to applicants who demonstrate control of the repowering project feedstock for at least 3 years. One of the commenters states that at an ethanol biorefinery this demonstration is impractical and unnecessary. Typical feedstock contracts at many ethanol biorefineries do not extend out to this duration of time. The repowering feedstock is readily available after the production of ethanol and so many ethanol biorefineries are already controlling feedstocks as necessary according to existing market and plant operating conditions. The commenter recommends removal of this scoring criteria as it discriminates unfairly against those who do not need to control feedstock 3 years out and already have a repowering feedstock available in their current process.

The other commenter states that many firms operate biomass facilities without long-term contracts for their biomass supply. This is a strategic business decision and does not necessarily determine success or failure. Biomass plants often procure materials on a mixed basis, sometimes by long-term contract and other times by simply procuring on the spot market or on short-term contract. For example, a firm may purchase wood from the spot market while also having contracts for biomass from private forests and/or for residues from wood products manufacturers. The term for the contracts can vary and the supply of biomass for a plant will change over time in response to market conditions.

The commenter states that it is possible that USDA included these points as a way of assuring a longer-term supply of biomass. Private investors often require a demonstration of the availability of 3–10 times the annual biomass requirement within a reasonable shipping distance as a part of their due diligence. The commenter recommends that, since sufficiency of supply, rather than control of the supply, is the crucial question, USDA should require as a threshold criterion that applicants demonstrate an adequate supply of biomass for the plant. Doing so will address the real issue (feedstock supply) without limiting the refinery's flexibility in managing their fuel supply.

Response: While many of the repowering applications proposed to use feedstock produced from their own process, such as stillage or syrup, many others proposed to purchase biomass. Control and availability of biomass are crucial to a project's viability. The rule does not make the control of biomass mandatory, rather a scoring element. The Agency revised the scoring criteria to include on site availability of renewable biomass or enforceable third party commitments to supply renewable biomass, similar to the Fiscal Year 2010 NOFA.

Closed System Use of Own Waste Streams

Comment: One commenter recommends developing a scoring criterion that would give preference to biorefineries that have closed systems or that can use their own waste or process streams in the repowering project. Preference should be given to these types of projects that utilize an already available biomass feedstock on-site. By using the available biomass feedstock in existing process streams, the carbon intensity associated with operations is further minimized by not having to include the carbon emissions associated with the processing and transportation of biomass feedstock from off-site sources as well as the amount attributed to the current transportation of the waste or process streams constituents off-site.

Another commenter noted that the meaning of the term "closed system" in this request for comment is not clear. Thus, the commenter recommends not including a scoring criterion for "closed systems" without clearly defining the term.

Response: Title IX of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246) provides for payments to biorefineries based upon the extent of the replacement of fossil fuels with renewable biomass and the cost effectiveness of the renewable biomass system. The statute contains no other criterion for awarding payments. The Agency believes it has effectively implemented the intent of the statute in the current rule.

Type of Fossil Fuel Displaced Payment

Comment: One commenter agrees with the concept of scoring an application higher for replacing certain types of fossil fuels that are the higher GHG emitting fuels. The commenter also states, however, that unless there are additional incentives for those fuels or the cost of those fuels significantly changes, it is likely the economic analysis will tend to favor replacement of natural gas based fossil fuel usage.

Response: The statute does not make the distinction among fossil fuels that the commenter proposes and does not specifically address emissions. While

the majority of facilities that have applied to date use natural gas, emissions from coal are more significant than from natural gas. The Agency recognizes that reductions of greenhouse gas emissions and hazardous air pollutant emissions will be greater under this program when coal is replaced than when natural gas is replaced. Therefore, in recognition of this, the Agency has revised the cost-effectiveness scoring criterion to include a provision that deducts 5 points when any portion of the fossil fuel being replaced is natural gas.

Purpose and Scope—§ 4288.1

Comment: Two commenters state that the rules as proposed exclude future advanced biofuels and biobased products facilities which hold great promise in achieving the program goal of incentivizing the replacement of fossil fuels by including the requirement that the incentives can only be awarded to biorefineries in existence on June 18, 2008. The commenters recommend that USDA use a broad definition of "in existence" when evaluating the eligibility of a biorefinery based on the requirement that the facility must be in existence on June 18, 2008 to be eligible for the program so that the maximum number of facilities qualify.

The commenters state that, while there are significant benefits to incentivizing biopower at biorefineries in existence on June 18, 2008, there are equal if not greater benefits to opening eligibility to new, more efficient technologies as well. Allowing this incentive to only be available to facilities in existence before June 2008 gives an advantage to existing technologies and biorefineries over new technologies and facilities, thereby threatening to stifle innovation in commercialization of biotechnologies such as advanced biofuels, biobased products, and renewable specialty chemicals that will be produced collectively at modern biorefineries. Incentivizing conventional technologies over advanced technologies in this manner will have significant effects on other programs such as renewable and low carbon fuel standards by giving these technologies an incentive to improve their lifecycle GHG emission reductions while not providing the same incentives to advanced technologies to do the same.

The second commenter adds that biorefineries that use energy efficient and cost effective business models, like producing multiple bioproducts at one facility, should not be disadvantaged.

Response: The statute only authorizes biorefineries in existence as of the date the Food, Conservation, and Energy Act of 2008 was passed (June 18, 2008) as eligible for participation in the program. This is not a matter within the discretion of the Agency.

Definitions—§ 4288.2

Comment: One commenter requests that USDA clarify that projects that retrofit biorefineries in existence prior to June 18, 2008 with additional equipment are eligible for this program provided the heat and power are centrally produced.

Response: The Agency's understands this comment to inquire whether retrofits made prior to the inception of the program are eligible for payments. Section 4288.12 specifically provides that project costs incurred prior to submitting an application to the Repowering Assistance Program are ineligible.

Applicant Eligibility—§ 4288.10

Comment: One commenter states that, while the Department is right to take steps to avoid the program disproportionately benefitting one company, many companies or entities own more than one plant. USDA's proposed "one company, one plant" rule might prevent conversion of more energy systems, thereby limiting program success, if funds would otherwise go unused as a result. The commenter suggests that, to avoid this potential unintended consequence, companies with more than one plant should be allowed up to two applications. Once a firm's highest scoring submission wins an award, the lower scoring of the two proposals would be set aside for a second round pool. The second round pool would only be considered if sufficient funds remain available from the first round. If sufficient funding is available, these second round submissions would be ranked according to point scores and selected until available funding is awarded. This approach will allow the Department to accomplish more in the event a smaller number of firms demonstrate interest in repowering and the program. By limiting the awards to two, USDA will largely preserve its goal of avoiding unfair benefits to one firm, while allowing potentially more use of program funds in some circumstances.

Response: The Agency's intent is to maximize the number of projects funded by limited resources, $35 million. The Agency wants to ensure that small- to medium-sized companies have an opportunity to compete for payments. Limiting applicants to one application achieves this objective.

Comment: One commenter would like USDA to clarify that energy integration synergies from co-locating a cellulosic ethanol plant with an existing starch-based plant will qualify for this program in the final rulemaking. The commenter states that certain technologies for production of cellulosic biofuels, will have substantial excess steam energy available for co-located users. When a cellulosic ethanol facility is co-located with an existing corn ethanol plant, it has the opportunity to reduce the natural gas requirement for the corn plant and allow it to qualify for this program.

Another commenter also asked for a similar clarification, pointing out that co-location is another way companies intend to participate in improving the economic viability and environmental sustainability of biofuel production facilities.

Response: An existing ethanol facility would be eligible for Repowering Assistance payments, and co-locating a project would not be a problem as long as the scope of the project would be limited to the existing ethanol facility. That portion of the project which served the cellulosic plant would be ineligible unless that cellulosic plant was in existence as of the date of passage of the Farm Bill (June 18, 2008).

Payment Info—§ 4288.13

Paragraph (a)

Comment: One commenter expressed concern with the realistic opportunity for a biorefinery to qualify due to all of the stipulations outlined in the program while making the changes in an economically feasible manner. The commenter states that the majority (80 percent) of the payment in this program is made after the project is in place and producing energy so the money to install these systems must be fronted by the biorefinery in hopes of recouping the costs in the future. There are very few funding sources in today's economic environment that will take the risk of installing a fairly new and unproven system at an existing biorefinery with the plan of collecting the funds once the system is producing energy. The commenter states that the other issue is that the return on investment must happen very quickly (<4 years), yet the costs of implementing many of the systems and acquiring the feedstocks heavily outweighs the current costs of the rural fossil fuel derived utilities to the facility. The commenter states that they have a strong desire to offset fossil fuel derived utility usage but it must make good economic sense in order to allow the biorefinery

to thrive during already extremely difficult market and economic conditions.

Response: The Agency acknowledges the burden on the applicant and has changed the payment method to provide an expedited incentive intended to lower barriers for applicants seeking to use the program to repower facilities. The program seeks to encourage and incentivize sustainable, long term biomass projects.

Application Review and Scoring—§ 4288.21

Cost-Effectiveness—Paragraph (b)(1)

Comment: One commenter states that USDA proposes the cost-effectiveness metric to implement the legislative requirement for cost effectiveness. The commenter states that while USDA refers to it as ROI, it actually appears to be a formula commonly understood as "simple payback" to represent the time necessary to pay off the investment through savings or other measurable benefits. The commenter states that "return on investment" is widely understood to represent a different calculation (*see* below) that measures in terms of percent or rate, not years, and believes that USDA's proposed measure should be referred to as the "payback period" or "simple payback."

ROI = (gain from investment − cost of investment) − cost of investment

The commenter further states that, regardless of its name, USDA's proposed approach to implementing this requirement has drawbacks, primarily by boosting the eligibility of projects that need the least funding. The commenter questions whether, if the payback is under 3 years, the incentive is really necessary, or perhaps if only a smaller incentive is needed to lower the payback to levels warranting investment. Increasing the incentive based on lower payback period may also increase the numbers of "free riders" who do not need an incentive to invest in the plant but can get a grant anyway.

The commenter further explains that payback and return on investment performance measures are appropriate for a private investor, but can easily lead a public agency astray from implementing the clear goals of the legislation. The measure employed for cost-effectiveness should focus on the effectiveness in accomplishing the legislative intent and goals, rather than short-term profitability. When a public agency cost-shares projects, such as under Repowering Assistance, the decision should be based on measures related to the public policy, not to profit maximization (which is the concern of the private partner).

Payback analysis outcomes will often skew from policy outcomes due to the very factors which make the policy necessary in the first place, such as the failure of energy project evaluation to include the costs of carbon pollution. Payback can also differ between candidate submissions based on factors such as differences in local economics, fuel costs or plant layouts. For example, some facilities may require more costly modifications to adapt to biomass power given their existing plant layout or access to fuel yards. Or, different biomass energy technologies may result in longer payback periods yet higher carbon pollution reductions. A payback focus might diminish the chances at funding for projects that are cost-effective at reaching the public policy goals.

The commenter proposes that the criteria for cost-effectiveness be based not on the private sector's measure of payback but, instead, on a measure related to the public policy goals. In this case the primary policy goal is carbon reduction; therefore, the appropriate criterion is the cost per ton of fossil CO_2 emissions displaced. By using this measure the USDA would more effectively address cost-effectiveness as required in the legislation through using the policy goal itself.

Response: The ROI methodology used was intentionally selected because of its simplicity; it is a simple return on investment calculation, also known as simple payback. The Agency agrees with the commenter that the methodology is more commonly known as Simple Payback and has changed its name in the rule from ROI to Simple Payback.

Title IX of the Food, Conservation, and Energy Act of 2008 sets forth specific criteria to determine the amount of payments. The criteria include: (1) The quantity of fossil fuels replaced by biomass, (2) the percentage reduction in fossil fuel, and (3) the cost and cost effectiveness of the biomass system.

The rule has been written to implement the statute. The cost effectiveness of the biomass system is not only a statutorily mandated criterion, but one which is essential for a project to provide a realistic cost competitive alternative to fossil fuels, such as natural gas and coal. The operation of a biorefinery is, ultimately, a business, and must achieve cost effectiveness to be viable over the long term.

Application Review and Scoring—§ 4288.21

Percentage of Reduction of Fossil Fuel Use—Paragraph (b)(2)

Comment: One commenter believes this is a very appropriate criterion that the Agency should use with the strong weighting factor proposed, because the goal of reducing carbon pollution is central to the purpose for Section 9004. The legislation states, in Section (b)(2), that the Agency should consider "the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system." The commenter recommends that the scoring on this point should be calculated as proportional to the percent of fossil fuel displacement. So, for example, displacement of 100 percent of the fossil fuels results in 35 points. All lower point scores should be proportional to the percentage fossil fuel reduction—for example, 80 percent of the total 35 points is 28 points. This linear scale rewards more fossil fuel displacement. There should be a minimum floor of at least 50 percent displacement. This scoring plan, however, does not account for the most efficient resource use, which will be the most environmentally beneficial utilization strategy. Combined heat and power has approximately twice the efficiency of standalone uses of either heat or power. The commenter proposes that the Agency recognize the value of this approach by awarding under this category 10 points for projects employing combined heat and power technologies, or otherwise demonstrating at least 50 percent efficiency. The 10 points would be in addition to the criteria of "percent displaced fossil fuels," which maximum can simply be reduced by 10 (from 35 to 25), maintaining the category's point totals. The following table shows how points vary by the percent of fossil fuels displaced for the proposed rule, a proportional level based on a 35 point maximum and a proportional level based on a 25 point maximum.

Proposed Point Scoring Proportionate Points According to Fossil Fuel Displacement:

(a) 100%	(b) 35	(c) 35	(d) 25.
(a) 80%	(b) 25	(c) 28	(d) 20.
(a) 60%	(b) 15	(c) 21	(d) 15.
(a) 40%	(b) 5	(c) 14	(d) 10.

(a) = Percent Displaced Fossil Fuels.
(b) = Points Proposed by USDA.
(c) = Proportional displacement points with 35 point maximum.
(d) = Proportional displacement points with 25 point maximum.

The commenter further recommends that there should be bonus points scored

for plants that exceed 100 percent displacement, but only from combined heat and power systems. This can happen if biorefineries become net power, and/or heat, exporters. In most cases, they would displace fossil fuels used for other purposes by customers beyond the host plant. This approach would more fully utilize the plant investment, reducing unit costs and potentially increasing project feasibility. The commenter recommends, for simplicity, using a single threshold for exported power and recommends an extra 10 points for power and/or heat exports above 10 percent of plant demand.

The commenter states that USDA should implement a single methodology to estimate the level of CO_2 reductions under the various submissions. Otherwise, a wide range of approaches may be used by applicants, making fair comparison and submission processing very difficult. The commenter recommends that this would be the point to implement the approach using emissions factors for different fossil fuels, as described in Section IV, "Request for Comments," item 10, of the proposed rule. By using emission factors established by the Energy Information Administration or the U.S. EPA for fossil and biomass fuels, the applicants and USDA can use standard and uniform emissions factors and formulae for estimating carbon pollution reductions.

Response: The intent of this program is to assist eligible biorefineries to use renewable biomass and move away from fossil fuels including, but not limited to: Propane, coal, oil, and natural gas. Most sources of electric generation are derived from fossil fuel, and the program takes that into account in evaluating the content of electric power consumed by an applicant.

Because the intent of the program is to encourage and reward the greatest displacement of fossil fuels with biomass, scoring is not proportional. The Act restricts the eligible project costs to repowering the facility. The program does not prevent an applicant from becoming a net power producer, it merely prevents the public from providing payments for that purpose. Based on applicant experience to date, more definition in scoring criteria has not been needed as a selection factor in the program.

Application Review and Scoring—§ 4288.21

Renewable Biomass Factors—Paragraph (b)(3)

Comment: One commenter has concerns regarding the scoring criteria for "renewable biomass factors." The "renewable biomass factors" seem to be better described as "biomass supply arrangements." The proposed "factors" do not address whether or not the material is "renewable." The commenter proposes, as an alternative scoring approach for "renewable biomass factors," added points based on certain factors which reflect the greatest carbon pollution reduction benefits, and best environmental outcomes. The commenter states that the best proposals will maximize the realistic potential for a carbon-neutral, or carbon-negative, project. The goal for these criteria should be to maximize program success by rewarding the submissions with well-grounded and feasible plans for maximum sustainability. Points awarded based on viable practices and plans will allow the USDA to reward submissions that are most likely to accomplish program goals. The commenter suggests the following:

10 points: Project uses crops planted for energy use (such as perennial grasses or fast-growing trees) that are replanted after harvest with procurement plans that demonstrate harvest is accomplished in a sustainable manner. The project uses segregated and uncontaminated residues from the biorefinery process, such as stillage.

Response: The commenter points out that the criteria scored in the Renewable Biomass Factors section of the rule are the "biomass supply arrangements." The commenter advocates changing the criteria to award points based on the greatest carbon pollution reduction benefits and best environmental outcomes. The Agency believes that the criteria as written are essential to select sustainable projects which demonstrate access to an adequate supply of renewable biomass. The Repowering Assistance Program is designed to reduce carbon emission by the replacement of fossil fuel with renewable biomass. Title IX of the Food, Conservation and Energy Act of 2008 does not make the distinctions among fossil fuels that the commenter proposes. Environmental criteria are not part of the scoring elements. Mitigation of adverse environmental impacts is mandatory. Environmental requirements for the Repowering Assistance Program can be found in the rule and the National Environmental Policy Act.

Application Review and Scoring—§ 4288.21

Liquid Transportation Fuels—Paragraph (b)(5)

Comment: Two commenters disagree with the Agency's proposal to score projects on the basis of whether the biorefinery primarily produces liquid transportation fuels.

These two commenters caution the Agency against implementing a sole-use requirement for biorefinery eligibility. The future biorefinery will likely develop much like the typical oil refinery of today. In other words, one feedstock will be utilized to produce several products at one facility. In a biorefinery's case, renewable biomass would be the feedstock and multiple biofuels, biobased products, and specialty renewable chemicals could be produced at the same plant or industrial facility. The commenters believe that the Agency should encourage the concept of industrial ecology and collocation of diverse product manufacturing units.

Response: The Repowering Program is statutorily required to provide payments for biorefineries in existence as of the passage of the Farm Bill (June 18, 2008). The program was designed to work with facilities that primarily produce transportation fuels based on the direction given in the manager's report. Still, there is nothing in the rule that prohibits applicants from applying for payments if they do not produce transportation fuels. Future biorefineries are not the focus of the Repowering Assistance Program, they are addressed by research programs and fall into the province of the Biorefinery Assistance Program or possibly the Rural Energy for America Program.

General—Benefits of the Program

Comment: One commenter states that the program has the potential to provide a significant number of operational, environmental, and economic benefits that would improve existing biorefinery operations, reduce the amount of emissions and carbon intensity associated with fossil fuel energy use, and promote the sustainability of rural communities by providing economic benefits, while decreasing the country's dependence on fossil fuel based energy. The commenter also states, however, that the amount of capital needed to realize these benefits fully is prohibitive in an economic analysis. The Section 9004 program can provide the assistance needed to help projects come to fruition by making the economic analysis become more favorable with the proper financial incentives.

The commenter explains that repowering with the renewable biomass associated with existing process streams at ethanol facilities will improve operations by increasing plant efficiencies and production capabilities. Many ethanol biorefineries already have available the necessary process streams to integrate into the technologies that would generate biogas. After ethanol is produced and separated there remains whole and thin stillage streams with various solids concentrations that could be utilized in anaerobic digestion processes to generate biogas. The biogas could then be used to generate electricity or burned in a boiler for process heat. The commenter states that there is enough biomass in the stillage process streams after ethanol production to generate enough renewable biogas to offset up to 100 percent of all the fossil fuel usage needed for process heat and electricity generation at ethanol biorefineries. Incorporating biogas generation will help plants improve energy efficiencies by not having to use energy to concentrate up the stillage stream solids content through evaporation or other processes that are done currently. Biogas generation will improve operations by removing any of the undesirable constituents in the portion of recycled process water or thin stillage typically sent back through the ethanol production process. Decreasing the amount of undesirable constituents will create the potential for higher ethanol production capabilities or improvement in ethanol yields.

The commenter also explains that the program has the potential to significantly decrease emissions and the carbon intensity associated with ethanol production to make it substantially lower than the carbon intensity of conventional gasoline. A significant portion of the carbon intensity at ethanol plants are those associated with the greenhouse gases generated from fossil fuel energy usage to create process heat and electricity. If facilities are repowered with existing renewable biomass feedstock sources that are already available in the process streams, the carbon intensity will be greatly reduced by lowering fossil fuels consumed making it an even more valuable low carbon fuel. By using the available biomass feedstock in existing process streams the carbon intensity is further minimized by not having to include the carbon emissions associated with the processing and transportation of biomass feedstock from offsite sources as well as the amount attributed to the current transportation of the waste or process streams constituents off-site. Potentially it could create a distinct advantage on the world markets by lowering the carbon intensity of home grown ethanol below that of the current Brazilian sugar based ethanol carbon intensity values. In the U.S. there are approximately 190 ethanol biorefineries and a majority of these facilities could incorporate renewable fuel generation technologies if the economics were favorable to do so. This program, if structured properly to make it economical, could help the U.S. ethanol industry become even more environmentally friendly than it already is by reducing significant amounts of fossil fuel usage and carbon intensity.

The commenter also states that the program has the potential to provide a significant number of economic benefits and opportunities to the existing biorefineries and the rural communities typically around them. This program could support potentially large capital projects that provide and support numerous jobs associated with the equipment, construction, and continuing operation of the improved facilities. The economic benefit could have a far reaching impact beyond the rural area to providing additional economic stimulus to the country. Another economic benefit is the protection it provides to future costs associated with fossil fuel derived energy due to fluctuations in the market or to national or State legislation on low carbon fuel standards, carbon taxes, or cap and trade programs. Incorporation of these types of repowering projects into existing biorefineries helps promote economic sustainability of the facility operation as it will allow for more operational flexibility by having more options for different fuel sources and by-product pathways to respond to market conditions.

Response: The Agency thanks the commenter for their comments. A significant share of the applications submitted under the Repowering Assistance Program have utilized just such strategy and many of the applicants that may have chosen other resource streams will undoubtedly make use of low carbon fuel standards as an increased value stream.

General—Sustainable Fuels

Comment: One commenter states that the Congressional intent for the program was to displace fossil fuels in a manner that reduces carbon emissions at biorefineries. The USDA should take steps to ensure that taxpayer funding is not used in ways that could increase carbon pollution, or otherwise harm the environment. This approach is good policy and is also important to maintain public support for this type of program, and biofuels in general. If the public perceives their tax dollars being used to support projects that harm the environment, a public opinion backlash is likely. The Repowering Assistance program can and should result in beneficial use of biomass energy crops and residues from farms and forests for fuel. However, USDA should ensure that the development, removal and use of this biomass is done sustainably, by which we mean preserving soil integrity and avoiding erosion, surface water pollution, sedimentation, soil carbon depletion or other negative environmental and natural resource impacts. Some purchasers of crops residues for bioenergy production, like Show Me Energy in Missouri, already require their suppliers to demonstrate removal of residues is done in a sustainable manner. The fact that these purchasers already require a sustainability demonstration indicates both a desire to minimize environmental harm and the ability to do so. The commenter recommends that, to avoid potential harm, the Repowering Assistance rule require safeguards be put into place to ensure that fuels and practices are environmentally beneficial. The commenter states that, on the energy conversion side, a focus on combined heat and power with appropriate fuels has been found to be the best biomass energy pathway toward net reductions in carbon pollution.

Response: The intent of Congress was to replace fossil fuels with biomass. The Agency agrees that this approach is good policy and good for rural America. We also agree that the program should consider the overall impacts on the environment. In fact, we believe that the information that is requested in the application addresses environmental concerns. The program is subject to the National Environmental Policy Act (NEPA) and both the definition of "biomass" and the scoring criteria are already designed to safeguard the environment. Thus, we believe that the commenter's concerns have already been addressed in the rule as proposed.

List of Subjects in 7 CFR Part 4288

Administrative practice and procedure, Energy—advanced biofuel, Renewable biomass, Reporting and recordkeeping.

For the reasons set forth in the preamble, title 7, chapter XLII of the Code of Federal Regulations, is amended by adding a new part 4288 to read as follows:

PART 4288—PAYMENT PROGRAMS

Subpart A—Repowering Assistance Payments to Eligible Biorefineries

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4288.27–4288.100 [Reserved]

Subpart B—[Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Repowering Assistance Payments to Eligible Biorefineries

§ 4288.1 Purpose and scope.

(a) *Purpose.* The purpose of this program is to provide financial incentives to biorefineries in existence on June 18, 2008, the date of the enactment of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (Pub. L. 110–246), to replace the use of fossil fuels used to produce heat or power at their facilities by installing new systems that use renewable biomass, or to produce new energy from renewable biomass.

(b) *Scope.* The Agency may make payments under this program to any biorefinery that meets the requirements of the program up to the limits established for the program. Based on our research and survey of medium-sized project costs, the Agency has determined that the dollar amount identified will provide adequate incentive for biorefineries to apply.

(1) The Agency will determine the amount of payments to be made to a biorefinery taking into consideration the percentage reduction in fossil fuel used by the biorefinery (including the quantity of fossil fuels a renewable biomass system is replacing), and the cost and cost-effectiveness of the renewable biomass system.

(2) The Agency will determine who receives payment under this program based on the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system; the cost and cost-effectiveness of the renewable biomass system; and other scoring criteria identified in § 4288.21. The above criteria will be used to determine priority for awards of 50 percent of total eligible project costs, up to the maximum award applicable for the fiscal year.

§ 4288.2 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

Agency. The USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Application period. The time period announced by the Agency during which the Agency will accept applications.

Base energy use. The amount of documented fossil fuel energy use over an extended operating period.

(1) The extended operating period must be at least 24 months of recorded usage, and requires metered utility records for electric energy, natural gas consumption, fuel oil, coal shipments and propane use, as applicable for providing heat or power for the operation of the biorefinery.

(2) Utility billing, oil and coal shipments must be actual bills, with meter readings, applicable rates and tariffs, costs and usage. Billing must be complete, without gaps and arranged in chronological order. Drop shipments of coal or oil can be substituted for metered readings, provided the biorefinery documents the usage and its relationship to providing heat or power to the biorefinery.

(3) A biorefinery in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

Biobased products. Products determined by the Secretary to be commercial or industrial products (other than food or feed) that are:

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) Intermediate ingredients or feedstocks.

Biofuel. Fuel derived from renewable biomass.

Biorefinery. A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products, and may produce electricity.

Eligible biorefinery. A biorefinery that has been in existence on or before June 18, 2008.

Energy Information Agency (EIA). The statistical agency of the Department of Energy and source of official energy statistics from the U.S. Government.

Feasibility study. An Agency-acceptable analysis of the economic, environmental, technical, financial, and management capabilities of a proposed project or business in terms of its expected success. A list of items that must be included in a feasibility study is presented in § 4288.20(c)(9) of this subpart.

Financial interest. Any ownership, creditor, or management interest in the biorefinery.

Fiscal year. A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Fossil fuel. Coal, oil, propane, and natural gas.

Renewable biomass.

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land or public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health; and

(ii) Would not otherwise be used for higher value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old growth maintenance, restoration, and management direction as per paragraphs (e)(2), (e)(3), and (e)(4), and large tree retention as per paragraph (f), of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be "rural in character" by the Under Secretary for Rural Development, or as otherwise identified in this definition.

(1) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than 2 census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are "not urban in character."

(4) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(6) The determination that an area is "rural in character" will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (6)(ii) of this definition.

(i) The determination that an area is "rural in character" under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a "rural in character" designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (6)(i)(A) or (6)(i)(B) of this definition and discuss why the petitioner believes the area is "rural in character," including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's Web site, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

§ 4288.3 Review or appeal rights.

A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 4288.4 Compliance with other laws and regulations.

Participating biorefineries must comply with other applicable Federal, State, and local laws, including, but not limited to, the Equal Employment Opportunities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, 7 CFR Part 1901, subpart E, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Applicants must submit and will be subject to pre-award and post award compliance reviews with the terms and conditions set forth in Form RD 400–1, "Equal Opportunity Agreement" and Form RD 400–4, "Assurance Agreement."

§ 4288.5 Oversight, monitoring, and reporting requirements.

(a) *Verification.* The Agency reserves the right to verify all payment requests and subsequent payments made under this program, including field visits, as frequently as necessary to ensure the integrity of the program. Documentation provided will be used to verify, reconcile, and enforce the payment terms of Form RD 4288–5, "Repowering Assistance Program—Agreement," along with any potential refunds that the recipient will be required to make should they fail to adequately document their request.

(b) *Records.* (1) For purposes of verifying the eligible project costs supporting payments under this subpart, each biorefinery must maintain in one place such books, documents, papers, receipts, payroll records and bills of sale adequate to identify the purposes for which, and the manner in which funds were expended for eligible project costs. The biorefinery must maintain copies of all documents submitted to the Agency in connection with payments made hereunder. These records must be available at all reasonable times for examination by the Agency and must be held and be available for Agency examination for a period of not less than 3 years from the final payment date.

(2) For the purpose of verifying compliance with the fossil fuel reduction and energy production requirements of this subpart, each biorefinery must make available and provide for the metering of all power and heat producing boilers, containment vessels, generators and any other equipment related to the production of heat or power required to displace fossil fuel loads with renewable biomass. These records must be held in one place and be available at all reasonable times for examination by the Agency. Such records include all books, papers, contracts, scale tickets, settlement sheets, invoices, and any other documents related to the program that are within the control of the biorefinery. These records must be held and made available for Agency examination for a period of not less than 3 years from the date the repowering project becomes operational.

(c) *Reporting.* Upon completion of the repowering project, the biorefinery must submit a report using Form RD 4288–6, "Repowering Assistance Programs—Reporting Form," to the Agency annually for the first 3 years after completion of the project. The reports

are to be submitted as of October 1 of each year. The report must include the items specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Documentation regarding the usage and production of energy at the biorefinery during the previous year, including both the previous and current fossil fuel load and the renewable biomass energy production.

(i) Metered data documenting the production of heat, steam, gas and power must be obtained utilizing an Agency approved measurement device.

(ii) Metered data must be verifiable and subject to independent calibration testing.

(2) Current utility billing data, indentifying metered loads, from the base energy use period.

§ 4288.6 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this program may be obtained from the USDA Rural Development State Office, Renewable Energy Coordinator and the USDA Rural Development Web site at *http://www.rurdev.usda.gov/regs/.*

§ 4288.7 Exception authority.

The Administrator of the Agency ("Administrator") may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4288.8–4288.9 [Reserved]

§ 4288.10 Applicant eligibility.

(a) *Eligible projects.* To be eligible for this program, the applicant must be an eligible biorefinery utilizing only renewable biomass for replacement fuel, and must meet the requirements specified in paragraphs (a)(1) through (a)(5) of this section.

(1) *Timely complete application submission.* To be eligible for this program, the applicant must submit a complete application within the application period. Projects will be selected based on ranking which is derived from the application of the selection criteria stated in § 4288.21.

(2) *Multiple biorefineries.* Corporations and entities with more than one biorefinery can submit an application for only one of their biorefineries. However, if a corporation or entity has multiple biorefineries located at the same location, the entity may submit an application that covers such biorefineries provided the heat and power used in the multiple biorefineries are centrally produced.

(3) *Cost-effectiveness.* The application must be awarded at least minimum points for cost-effectiveness under § 4288.21(b)(1).

(4) *Percentage of reduction of fossil fuel use.* The application must be awarded at least minimum points for percentage of reduction of fossil fuel use under § 4288.21(b)(2).

(5) *Full project financing.* The applicant must demonstrate that it has sufficient funds or has obtained commitments for sufficient funds to complete the repowering project taking into account the amount of the payment request in the application.

(b) *Ineligible projects.* A project is not eligible under this subpart if it is using feedstocks for repowering that are feed grain commodities that received benefits under Title I of the Food, Conservation, and Energy Act of 2008.

§ 4288.11 Eligible project costs.

Eligible project costs will be only for project related construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees.

§ 4288.12 Ineligible project costs.

Any project costs incurred by the applicant prior to application for payment assistance under this program will be ineligible for payment assistance.

§ 4288.13 Payment information.

(a) *Maximum payment.* For purposes of this program, the maximum payment an applicant may receive will be 50 percent of total eligible project costs up to the applicable fiscal year's maximum award as announced in an annual **Federal Register** notice. There is no minimum payment to an applicant.

(b) *Reimbursement payments.* The Agency shall only make payments based on the biorefinery's expenditures on eligible project costs. Payments shall be determined by multiplying the amount of eligible expenditures stated on the payment request by a percentage obtained by dividing the aggregate payment award by total eligible project costs.

(c) *Timing of payments.* The Applicant may request payments not more frequently than once a month by submitting an original, completed, validly signed Standard Form (SF) 271, "Outlay Report and Request for Reimbursement for Construction Programs" including the supporting documentation identified in § 4288.23, to reimburse the applicant for the Agency's pro rata share of funds expended on eligible project costs. The Agency shall make such payments until 90 percent of the total payment award has been expended. The final 10 percent of the payment award will be paid upon completion of the repowering project and satisfactory evidence has been received by the Agency demonstrating that the biorefinery is operating as described in the Agency approved application.

§§ 4288.14–4288.19 [Reserved]

§ 4288.20 Submittal of applications.

(a) *Address to make application.* Application must be submitted to USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

(b) *Content and form of submission.* Applicants must submit a signed original and one copy of an application containing the information specified in this section. The applicant must also furnish the Agency the required documentation identified in Form RD 4288–4, "Repowering Assistance Program Application," to verify compliance with program provisions before acceptance into the program. Note that applicants are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number (unless the applicant is an individual). The DUNS number is a nine-digit identification number, which uniquely identifies business entities. A DUNS number can be obtained at no cost via a toll-free request line at 1–866–705–5711, or online at *http://fedgov.dnb.com/webform.* Applicants must submit to the Agency the documents specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Form RD 4288–4.* Applicants must submit this form and all necessary attachments providing project information on the biorefinery; the facility at which the biorefinery operates, including location and products produced; and the types and quantities of renewable biomass feedstock being proposed to produce heat or power. This form requires the applicant to provide relevant data to allow for technical analysis of their existing facility to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. The applicant must also submit evidence that the

biorefinery was in existence on or before June 18, 2008. The applicant is required to certify the information provided.

(2) RD Instruction 1940–Q, Exhibit A–1, "Certification for Contracts, Grants and Loans."

(3) Form RD 400–1.

(4) Form RD 400–4.

(5) Form RD 1940–20, "Request for Environmental Information" (first page only). Note, however, that applicants must substitute the narrative outlined in RD Instruction 1940–G, Exhibit H, in place of the narrative attachment specified in the instructions to Form RD 1940–20.

(6) Certifications. The applicant must furnish the Agency all required certifications before acceptance into the program, and furnish access to records required by the Agency to verify compliance with program provisions. The applicant must submit forms or other written documentation certifying to the following:

(i) AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions" or other written documentation.

(ii) AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions" or other written documentation.

(iii) SF–LLL, "Disclosure of Lobbying Activities."

(c) *Application package contents.* Applicants are required to provide relevant data to allow for technical analysis of their existing facilities to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. Applicants in existence on or before June 18, 2008 with more than 24 months of actual operating data must provide data for the most recent 24-month period. Applicants in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm. All applicants must submit the information specified in paragraphs (c)(1) through (c)(9) of this section as part of their application package.

(1) *Contact data.* Contact information for the primary technical contact for the biorefinery.

(2) *Biorefinery data.* Basic information on facility operations over time (hours/day, days/year).

(3) *Electric use data.* Information on existing electric service to the facility, data on consumption, peak and average demand, and monthly/seasonal use patterns.

(4) *Fuel use data.* Information on natural gas and current fuel use for boilers and heaters, including fuel type, costs, and use patterns.

(5) *Thermal loads.* Information on existing thermal loads, including type (steam, hot water, direct heat), conditions (temperature, pressure) and use patterns.

(6) *Existing equipment.* Information on existing heating and cooling equipment, including type, capacities, efficiencies and emissions.

(7) *Site-specific data.* Information on other site-specific issues, such as expansion plans or neighborhood considerations that might impact the proposed new system design or operation; or environmental impacts.

(8) *Biofuel and biobased product production.* Information on biofuel and biobased product production, including quantity and units of production.

(9) *Feasibility study.* The applicant must submit a feasibility study by an independent qualified consultant, which has no financial interest in the biorefinery, and demonstrates that the renewable biomass system of the biorefinery is feasible, taking into account the economic, technical and environmental aspects of the system. The feasibility study must include the components specified in paragraphs (c)(9)(i) through (c)(9)(x) of this section.

(i) An executive summary, including resume of the consultant, and an introduction/project overview (brief general overview of project location, size, *etc.*).

(ii) An economic feasibility determination, including:

(A) Information regarding the project site;

(B) Information on the availability of trained or trainable labor; and

(C) Information on the availability of infrastructure and rail and road service to the site.

(iii) A technical feasibility determination, including a report that:

(A) Describes the repowering project, including:

(*1*) Information on heating and cooling equipment, including type, capacities, efficiencies and emissions;

(*2*) Anticipated impacts of the repowering project on the information requested above relating to electric use data, fuel use data, thermal loads and biofuel and biobased product production; and

(*3*) A project development schedule as more fully described in § 4288.21(b)(4)(iv);

(B) Is based upon verifiable data and contains sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of energy production that are projected in the statements. The report must provide the information in a format that is responsive to the scoring criteria specified in § 4288.21(b)(1) through (5) and applicants should identify in their report the information that corresponds to each of the scoring criteria; and

(C) Identifies and estimates project operation and development costs and specifies the level of accuracy of these estimates and the assumptions on which these estimates have been based.

(iv) A financial feasibility determination that discusses the following:

(A) Repowering project construction funding, including repayment terms and security arrangements. Attach any documents relating to the project financing;

(B) The reliability of the financial projections and assumptions on which the project is based including all sources of project capital, both private and public, such as Federal funds;

(C) Projected balance sheets and costs associated with project operations;

(D) Cash flow projections for 3 years;

(E) The adequacy of raw materials and supplies;

(F) A sensitivity analysis, including feedstock and energy costs, product/co-product prices;

(G) Risks related to the project; and

(H) The continuity, maintenance and availability of records.

(v) A management feasibility determination.

(vi) Recommendations for implementation.

(vii) The environmental concerns and issues of the system.

(viii) The availability of feedstock, including discussions of:

(A) Feedstock source management;

(B) Estimates of feedstock volumes and costs;

(C) Collection, pre-treatment, transportation, and storage; and

(D) Impacts on existing manufacturing plants or other facilities that use similar feedstock.

(ix) The feasibility/plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock from those entities.

(x) If woody biomass from National forest system lands or public lands is proposed as the feedstock, documentation must be provided that it cannot be used as a higher value wood-based product.

§ 4288.21 Application review and scoring.

The Agency will evaluate projects based on the cost, cost-effectiveness, and capacity of projects to reduce fossil fuels. The cost of the project will be taken into consideration in the context of each project's ability to economically produce energy from renewable biomass to replace its dependence on fossil fuels. Projects with higher costs that are less efficient will not score well. The scoring criteria are designed to evaluate projects on simple payback as well as the percentage of fossil fuel reduction.

(a) *Review.* The Agency will evaluate each application and make a determination as to whether the applicant is eligible, whether the proposed project is eligible, and whether the proposed payment request complies with all applicable statutes and regulations. This evaluation will be conducted by experts in the Agency and other Federal agencies, including the U.S. Department of Energy based on the information provided by the applicant.

(b) *Scoring.* The Agency will score each application in order to prioritize each proposed project. The maximum number of points awardable to any applicant will be 100. The evaluation criteria that the Agency will use to score these projects are specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Cost-effectiveness.* Cost-effectiveness will be scored based on the anticipated simple payback period, or "simple payback." Anticipated simple payback will be demonstrated by calculating documented base energy use costs for the 24-month period prior to submission of the application or at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

(i) The simple payback period is calculated as follows:

- Simple payback = C/S

Where:

C = eligible capital expenses of the repowering project

S = savings in annual operating costs.

Example: Eligible capital expenses of the repowering project, including handling equipment, biomass boiler, piping improvements and plant modifications, are equal to $5,300,500. The annual difference in fossil fuel cost versus the cost for renewable biomass is $990,500. Assume these costs and uses are based on a yearly operating cycle, which may include handling, storage and treatment costs. In this example, C = $5,300,500; S = $990,500; simple payback = 5.35 years (C/S = simple payback).

(ii) A maximum of 20 points will be awarded as follows:

(A) If the anticipated simple payback is less than or equal to 4 years, award 20 points.

(B) If the anticipated simple payback is greater than 4 years but less than or equal to 6 years, award 10 points.

(C) If the anticipated simple payback will be greater than 6 years but less than or equal to 10 years, award 5 points.

(D) If the anticipated simple payback will be greater than 10 years, award 0 points.

(2) *Percentage of reduction of fossil fuel use.* The anticipated percent reduction in the use of fossil fuels will be measured using the same evidence provided by the applicant for measuring cost-effectiveness. However, this set of criteria will measure actual fossil fuel use for the 24-month period prior to submission of the application or for at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm. All fossil fuel use, for thermal loads as well as for electric use, will be evaluated by using information provided by the Energy Information Agency (EIA). The Agency will determine the percentage reduction of fossil fuel use based on and in cooperation with the applicant's submission of electric power provider contracts, power agreements, and utility billings in relation to available information from the EIA. A maximum of 35 points will be awarded as follows:

(i) Applicant demonstrates an anticipated annual reduction in fossil fuel use of 100 percent, award 35 points.

(ii) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 80 percent but less than 100 percent, award 25 points.

(iii) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 60 percent but less than 80 percent, award 15 points.

(iv) Applicant demonstrates an anticipated annual reduction in fossil fuel use of at least 40 percent but less than 60 percent, award 5 points.

(v) Applicant demonstrates an anticipated annual reduction in fossil fuel use of less than 40 percent, award 0 points.

(vi) If any of the fossil fuel being replaced is natural gas, deduct 5 points.

(3) *Renewable biomass factors.* If an applicant demonstrates at the time of application that it has on site available access to renewable biomass or enforceable third party commitments to supply renewable biomass for the repowering project for at least 3 years, 5 points will be awarded. If an applicant cannot demonstrate this, no points will be awarded.

(4) *Technical review factors.* Technical reviews will be conducted by a team of experts, including rural energy coordinators and State engineers. The Agency may engage the services of other government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. Each section of the technical review will be scored within a range of possible points available within that section. A maximum of 25 points will be awarded as follows:

(i) *Qualifications of the applicant's project team.* The applicant must describe the qualifications of those individuals who will be essential to successful performance of the proposed project. This will include information regarding professional credentials, relevant experience, and education, and must be supported with documentation of service capabilities, professional credentials, licenses, certifications, and resumes, as applicable. Award 0–5 points.

(ii) *Agreements and permits.* The applicant must describe the agreements and permits necessary for project implementation. An Agency-acceptable schedule for securing the required documents and permits must be provided. Award 0–4 points.

(iii) *Design and engineering.* The applicant must describe the design, engineering, and testing needed for the proposed project. The Design and Engineering documents shall demonstrate that they meet the intended purpose, ensure public safety, and comply with all applicable laws, regulations, agreements, permits, codes, and standards. Award 0–4 points.

(iv) *Project development schedule.* The applicant must provide a detailed plan for project development including a proposed schedule of activities, a description of each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. This description must address the applicant's project development cash flow requirements. Award 0–3 points.

(v) *Equipment procurement.* The applicant must describe the equipment needed, and the availability of the equipment needed, to complete installation and activation of the new system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule. Award 0–3 points.

(vi) *Equipment installation.* The applicant must provide a satisfactory description of the plan for site

development and system installation that reflects the soundness of the project plan. Award 0–3 points.

(vii) *Operations and maintenance.* The applicant must describe the operations and maintenance requirements of the system necessary for the system to operate as designed and provide the savings and efficiencies as described. The description and requirements noted must be supportable by the technical review. Award 0–3 points.

(5) *Liquid transportation fuels.* If the biorefinery primarily produces liquid transportation fuels, award 10 points.

(6) *Rural area.* If the biorefinery is located in a Rural Area, award 5 points.

§ 4288.22 Ranking of applications.

All scored applications will be ranked by the Agency as soon after the application deadline as possible. The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for payments.

(a) *Selection of applications for payments.* Using the application scoring criteria point values specified in § 4288.21 of this subpart, the Agency will select applications for payments.

(b) *Availability of funds.* As applications are funded, if insufficient funds remain to pay the next highest scoring application, the Agency may elect to pay a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its payment request to the amount of funds available. If the applicant agrees to lower its payment request, it must certify that the purposes of the project can be met, and the Agency must determine the project is feasible at the lower amount.

§ 4288.23 Notifications.

(a) *Successful applicants.* Successful applicants will receive an award letter notifying them of the award, including the terms and conditions, and Form RD 4288–5. Each funded project is unique, and, therefore, conditions of Form RD 4288–5 may vary among projects. Successful applicants must execute and return the Form RD 4288–5, accompanied by any additional items identified in the award letter.

(b) *Unsuccessful applicants.* Unsuccessful applicants will receive a letter notifying them of their application score and ranking and the score necessary to qualify for payments.

§ 4288.24 Program payment provisions.

The procedure the Agency will use to make payments to eligible biorefineries is specified in paragraphs (a) through (e) of this section.

(a) *Payment applications.* The Agency shall make payments based on the biorefinery's expenditures on eligible project costs. To request payments under this program during a fiscal year, an eligible biorefinery must:

(1) Submit an original, validly signed and completed SF 271 to the Agency not more frequently than once a month with the following supporting documentation:

(i) Evidence of expenditure of funds on eligible project costs which shall include paid third party invoices, receipts, bills of sale, and/or payroll records. Such records must be adequate to identify that funds to be reimbursed were spent on eligible project costs; and

(ii) Evidence that construction of the repowering project is in compliance with the project development schedule.

(2) Certify that the request is accurate.

(3) Furnish the Agency such certifications as required in Form RD 4288–4, Part C, and access to records that verify compliance with program provisions.

(b) *Clarifying information.* After payment applications are submitted, eligible biorefineries may be required to submit additional supporting clarification if their original submittal is not sufficient to verify eligibility for payment.

(c) *Notification.* The Agency will notify the biorefinery, in writing, whenever the Agency determines that a payment request is ineligible and why the request was determined ineligible.

(d) *Refunds and interest payments.* An eligible biorefinery that has received a payment under this program may be required to refund such payment as specified in paragraphs (d)(1) through (d)(5) of this section.

(1) An eligible biorefinery receiving payment under this program will become ineligible for payments if the Agency determines the biorefinery has:

(i) Made any material fraudulent representation;

(ii) Misrepresented any material fact affecting a program determination; or

(iii) Upon completion of the repowering project, failed to reduce its fossil fuel consumption, produce energy from renewal biomass or otherwise operate as described in its Agency approved application.

(2) All payments made to a biorefinery determined by the Agency to be ineligible must be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs, as determined appropriate under 31 CFR 901.9.

(3) When a refund is due, it must be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the biorefinery, and sharing information with the Department of Justice.

(4) Late payment interest will be assessed on each refund in accordance with provisions and rates as determined by the Agency.

(i) Interest charged by the Agency under this program will be at the rate established annually by the Secretary of the U.S. Treasury pursuant to 31 U.S.C. 3717. Interest will accrue from the date payments were received by the biorefinery to the date of repayment, and the rate will adjust in accordance with applicable regulations.

(ii) The Agency may waive the accrual of interest and/or damages if the Agency determines that the cause of the erroneous determination was not due to any fraudulent or negligent action of the biorefinery.

(5) A biorefinery or person receiving payment under this program will be liable for any refund or related charges associated with their project due under this program.

(e) *Remedies.* The remedies provided in this subpart will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 4288.25 Succession and control of facilities and production.

Any party obtaining a biorefinery that is participating in this program must request permission to participate in this program as a successor. The Agency may grant such request if it is determined that, the party is eligible, and permitting such succession would serve the purposes of the program. If appropriate, the Agency will require the consent of the previous party to such succession. Also, the Agency may terminate payments and demand full refund of payments made if a party loses control of a biorefinery whose production of heat or power from renewable biomass is the basis of a program payment, or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 4288.26 Fiscal Year 2009 and Fiscal Year 2010 applications.

Any entity that submitted an application for payment to the Agency under this program prior to March 14,

2011 will have their payments made and serviced in accordance with the provisions specified in this subpart.

§§ 4288.27–4288.100 [Reserved]

Dated: January 31, 2011.

Dallas Tonsager,

Under Secretary, Rural Development.

[FR Doc. 2011–2480 Filed 2–10–11; 8:45 am]

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Part III

Department of Agriculture

Rural Business-Cooperative Service
Rural Utilities Service

7 CFR Part 4288
Advanced Biofuel Payment Program; Interim Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4288

RIN 0570–AA75

Advanced Biofuel Payment Program

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Rural Business–Cooperative Service (Agency) is establishing the Advanced Biofuel Payment Program authorized under the Food, Conservation, and Energy Act of 2008. Under this Program, the Agency will enter into contracts with advanced biofuel producers to pay such producers for the production of eligible advanced biofuels. To be eligible for payments, advanced biofuels must be produced from renewable biomass, excluding corn kernel starch, in a biofuel facility located in a State.

In addition, this interim rule establishes new program requirements for applicants to submit applications for Fiscal Year 2010 payments for the Advanced Biofuel Payment Program. These new program requirements supersede the Notice of Contract Proposal (NOCP) for Payments to Eligible Advanced Biofuel Producers in its entirety.

DATES: This interim rule is effective March 14, 2011. Written comments on this interim rule must be received on or before April 12, 2011.

See the **SUPPLEMENTARY INFORMATION** for application dates for Advanced Biofuel Payment Program Fiscal Year 2010 funds.

ADDRESSES: *Interim rule.* You may submit comments on this interim rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

See the **SUPPLEMENTARY INFORMATION** for addresses concerning applications for Advanced Biofuel Payment Program Fiscal Year 2010 funds.

FOR FURTHER INFORMATION CONTACT: For the Advanced Biofuel Payment Program, contact Diane Berger, USDA Rural Development, 1400 Independence Avenue, SW., Room 6865, STOP 3225, Washington, DC 20250. Telephone: (202) 260–1508. Fax: (202) 720–2213. E-mail: *diane.berger@wdc.usda.gov.*

For information about the Fiscal Year 2010 applications and for Advanced Biofuel Payment Program assistance, please contact the applicable Rural Development Energy Coordinator, as provided in the **SUPPLEMENTARY INFORMATION** section of this preamble.

SUPPLEMENTARY INFORMATION:

Fiscal Year 2010 Applications for the Advanced Biofuel Payment Program

Applications for the Advanced Biofuel Payment Program Fiscal Year 2010 funds will be accepted from February 11, 2011 through April 12, 2011. Applications received after April 12, 2011 will not be considered for Fiscal Year 2010 payments. Application materials may be obtained by contacting one of Rural Development's Energy Coordinators or by downloading through *http://www.grants.gov.*

Submit electronic applications at *http://www.grants.gov,* following the instructions found on this Web site. To use Grants.gov, an applicant (unless the applicant is an individual) must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* Submit completed paper applications to the Rural Development State Office in the State in which the producer's principal place of business is located.

Rural Development Energy Coordinators

Note: Telephone numbers listed are not toll-free.

Alabama

Quinton Harris, USDA Rural Development Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3623, *Quinton.Harris@al.usda.gov*.

Alaska

Chad Stovall, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7718, *chad.stovall@ak.usda.gov*.

American Samoa (*See* Hawaii)

Arizona

Alan Watt, USDA Rural Development, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8769, *Alan.Watt@az.usda.gov*.

Arkansas

Tim Smith, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3280, *Tim.Smith@ar.usda.gov*.

California

Philip Brown, USDA Rural Development, 430 G Street, #4169, Davis, CA 95616, (530) 792–5811, *Phil.brown@ca.usda.gov*.

Colorado

Jerry Tamlin, USDA Rural Development, 655 Parfet Street, Room E–100,Lakewood, CO 80215, (720) 544–2907, *Jerry.Tamlin@co.usda.gov*.

Commonwealth of the Northern Marianas Islands-CNMI (*See* Hawaii)

Connecticut (*see* Massachusetts)

Delaware/Maryland

Bruce Weaver, USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3626, *Bruce.Weaver@de.usda.gov*.

Federated States of Micronesia (*See* Hawaii)

Florida/Virgin Islands

Matthew Wooten, USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3486, *Matthew.wooten@fl.usda.gov*.

Georgia

J. Craig Scroggs, USDA Rural Development, 111 E. Spring St., Suite B, Monroe, GA 30655, Phone 770–267–1413 ext. 113, *craig.scroggs@ga.usda.gov*.

Guam (*See* Hawaii)

Hawaii/Guam/Republic of Palau/Federated States of Micronesia/Republic of the Marshall Islands/America Samoa/Commonwealth of the Northern MarianasIslands-CNMI

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo,

HI 96720, (808) 933–8313, *Tim.Oconnell@hi.usda.gov*.

Idaho

Brian Buch, USDA Rural Development, 9173 W. Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5623, *Brian.Buch@id.usda.gov*.

Illinois

Molly Hammond, USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6210, *Molly.Hammond@il.usda.gov*.

Indiana

Jerry Hay, USDA Rural Development, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (812) 873–1100, *Jerry.Hay@in.usda.gov*.

Iowa

Teresa Bomhoff, USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4447, *teresa.bomhoff@ia.usda.gov*.

Kansas

David Kramer, USDA Rural Development, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2730, *david.kramer@ks.usda.gov*.

Kentucky

Scott Maas, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435, *scott.maas@ky.usda.gov*.

Louisiana

Kevin Boone, USDA Rural Development, 905 Jefferson Street, Suite 320, Lafayette, LA 70501, (337) 262–6601, Ext. 133, *Kevin.Boone@la.usda.gov*.

Maine

John F. Sheehan, USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9168, *john.sheehan@me.usda.gov*.

Maryland (*see* Delaware)

Massachusetts/Rhode Island/ Connecticut

Charles W. Dubuc, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002, (401) 826–0842 X 306, *Charles.Dubuc@ma.usda.gov*.

Michigan

Traci J. Smith, USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5157, *Traci.Smith@mi.usda.gov*.

Minnesota

Lisa L. Noty, USDA Rural Development, 1400 West Main Street, Albert Lea, MN 56007, (507) 373–7960 Ext. 120, *lisa.noty@mn.usda.gov*.

Mississippi

G. Gary Jones, USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457, *george.jones@ms.usda.gov*.

Missouri

Matt Moore, USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9321, *matt.moore@mo.usda.gov*.

Montana

Michael Drewiske, USDA Rural Development, 900 Technology Blvd., Unit 1, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2554, *Michael.drewiske@mt.usda.gov*.

Nebraska

Debra Yocum, USDA Rural Development, 100 Centennial Mall North, Room 152, Federal Building, Lincoln, NE 68508, (402) 437–5554, *Debra.Yocum@ne.usda.gov*.

Nevada

Mark Williams, USDA Rural Development, 1390 South Curry Street, Carson City, NV 89703, (775) 887–1222, *mark.williams@ nv.usda.gov*.

New Hampshire (*See* Vermont)

New Jersey

Victoria Fekete, USDA Rural Development, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7752, *Victoria.Fekete@nj.usda.gov*.

New Mexico

Jesse Bopp, USDA Rural Development, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4952, *Jesse.bopp@nm.usda.gov*.

New York

Scott Collins, USDA Rural Development, 9025 River Road, Marcy, NY 13403, (315) 736–3316 Ext. 4, *scott.collins@ny.usda.gov.*

North Carolina

David Thigpen, USDA Rural Development, 4405 Bland Rd. Suite 260, Raleigh, NC 27609, 919–873–2065, *David.Thigpen@nc.usda.gov*.

North Dakota

Dennis Rodin, USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2068, *Dennis.Rodin@nd.usda.gov*.

Ohio

Randy Monhemius, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2424, *Randy.Monhemius@oh.usda.gov*.

Oklahoma

Jody Harris, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1036, *Jody.harris@ok.usda.gov*.

Oregon

Don Hollis, USDA Rural Development, 200 SE. Hailey Ave, Suite 105, Pendleton, OR 97801, (541) 278–8049, Ext. 129, *Don.Hollis@or.usda.gov*.

Pennsylvania

Bernard Linn, USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2182, *Bernard.Linn@pa.usda.gov*.

Puerto Rico

Luis Garcia, USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5091, Ext. 251, *Luis.Garcia@pr.usda.gov*.

Republic of Palau (*See* Hawaii)

Republic of the Marshall Islands (*See* Hawaii)

Rhode Island (*See* Massachusetts)

South Carolina

Shannon Legree, USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3150, *Shannon.Legree@sc.usda.gov*.

South Dakota

Dana Kleinsasser, USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1157, *dana.kleinsasser@sd.usda.gov*.

Tennessee

Will Dodson, USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1350, *will.dodson@tn.usda.gov*.

Texas

Billy Curb, USDA Rural Development, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9775, *billy.curb@tx.usda.gov*.

Utah

Roger Koon, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4301, *Roger.Koon@ut.usda.gov*.

Vermont/New Hampshire

Cheryl Ducharme, USDA Rural Development, 89 Main Street, 3rd Floor, Montpelier, VT 05602, 802–828–6083, *cheryl.ducharme@vt.usda.gov*.

Virginia

Laurette Tucker, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1594, *Laurette.Tucker@va.usda.gov*.

Virgin Islands (*see* Florida)

Washington

Mary Traxler, USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7762, *Mary.Traxler@wa.usda.gov*.

West Virginia

Richard E. Satterfield, USDA Rural Development, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4874, *Richard.Satterfield@wv.usda.gov*.

Wisconsin

Brenda Heinen, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615, Ext. 139, *Brenda.Heinen@wi.usda.gov*.

Wyoming

Jon Crabtree, USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82602, (307) 233–6719, *Jon.Crabtree@wy.usda.gov*.

Executive Order 12866

This interim rule has been reviewed under Executive Order (EO) 12866 and has been determined to be economically significant by the Office of Management and Budget. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted benefit-cost analyses to fulfill the requirements of EO 12866. In the benefit-cost analysis, the Agency quantified the cost of the Advanced Biofuel Payment Program, but did not quantify its benefits. Costs were quantified for the burden of the Program to the public and to the Federal government, but its economic impacts were not quantified. Qualitative discussions of potential impacts of the Program on jobs, the environment, and energy are presented in the analysis. While unable to quantify the benefits associated with this rulemaking, the Agency believes that the overall effect of the rule will be beneficial.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) of Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This interim rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act/ Environmental Impact Statement

This renewable energy program under Title IX of the 2008 Farm Bill has been operated on an interim basis through the issuance of a Notice of Contract Proposal (NOCP). During this initial round of applications, the Agency conducted National Environmental Policy Act (NEPA) reviews on each individual application for funding. No significant environmental impacts were reported. As expected, these applications were not from any concentrated grouping of applicant facilities, but represented a wide variety of applicants for a diverse range of renewable energy proposals. Taken collectively, the applications show no potential for significant adverse cumulative effects.

The Agency has prepared a programmatic environmental assessment (PEA), pursuant to 7 CFR part 1940, subpart G, analyzing the environmental effects to air, water, and biotic resources; land use; historic and cultural resources, and greenhouse gas emissions affected by the Advanced Biofuel Payment Program rule. The purpose of the PEA is to assess the overall environmental impacts of the programs related to the Congressional goals of advancing biofuels production for the purposes of energy independence and greenhouse gas emission reductions. The impact analyses are national in scope, but draw upon site-specific data from advanced biofuel facilities funded under Sections 9003 (Biorefinery Assistance Guaranteed Loans) and 9004 (Repowering Assistance Payments to Eligible Biorefineries), as reasonable assumptions for the types of facilities, feedstocks, and impacts likely to be funded under this rulemaking for FY 2010–2012. Site-specific NEPA documents prepared for those facilities funded under Sections 9003 and 9004 in FY 2008 and/or 2009 were utilized, as well, to forecast likely impacts under the interim rule. However, because there are no site-specific data on facilities funded under the Section 9003 program, the PEA discusses qualitatively the general processes, materials, and feedstocks used for the range of heterogeneous facilities in the U.S. eligible for producer payments under Section 9005. In addition, the PEA provides qualitative analyses of likely programmatic impacts beyond the FY 2012 program expiration date, as appropriate. The draft PEA was made available to the public for comment on the USDA Rural Business-Cooperative Service's Web site in May, 2010. No comments were received on the draft PEA and the Agency has issued a Finding of No Significant Impact (FONSI) for the program, which is available on the Agency Web site.

Executive Order 12988, Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988. In accordance with the rules: (1) All State and local laws and regulations that are in conflict with these rules will be preempted; (2) no retroactive effect will be given the rules; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture's National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

It has been determined, under Executive Order 13132 that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action will not have an economically significant impact on a substantial number of small entities. Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the Program. Small entity applicants will not be affected to a greater extent than large entity applicants.

For this Program, the Agency received approximately 180 applications in Fiscal Year 2009, and approved 160 entities for participation. In assessing whether these entities are small businesses, the Agency notes that there is no unique Small Business Administration (SBA) definition for biofuel facilities, including biorefineries, because biofuel facilities and biorefineries are found in a number of North American Industry Classification System (NAICS) codes. The majority of existing biofuel facilities produce biodiesel, and for these facilities, the small business definition is 1,000 employees. Based on Agency experience and in-house knowledge of the Fiscal Year 2009 applicants and using 1,000 employees as the definition of small business, the majority of biofuel facilities applying in Fiscal Year 2009 would be classified as small businesses. The Agency expects this to continue to be true as the Program continues.

The average cost to a biofuel facility to participate in the Program is estimated to be approximately $500. This cost is not expected to impose an economically significant impact on these small entities. Because of this minimal cost, the Agency does not believe that the cost of applying and participating will dissuade a small business from seeking to participate in this program. Further, biofuel facilities are expected to realize more in payments than in costs for participating in the program. Thus, participating biofuel facilities will be able to recoup this expense, although small biofuel facilities are likely to take longer to recoup the expense because they will be producing less advanced biofuel.

This regulation only affects biofuel facilities that choose to participate in the programs. Lastly, the programs are open to all eligible producers, regardless of their size.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The regulatory impact analyses conducted for this rule meet the requirements of Executive Order No. 13211, which states that an agency undertaking regulatory actions related to energy supply, distribution, or use is to prepare a Statement of Energy Effects. The analyses did not find that the rule will have any adverse impacts on energy supply, distribution or use.

Executive Order 12372, Intergovernmental Review of Federal Programs

This Program is not subject to Executive Order 12372 because the Programs are not listed as covered programs on the Intergovernmental Consultation list.

Executive Order 13175

USDA will undertake, within 6 months after this rule becomes effective, a series of regulation Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The policies contained in this rule would not have Tribal implications that preempt Tribal law.

Programs Affected

The Advanced Biofuel Payment Program is listed in the Catalog of Federal Domestic Assistance under Number 10.867.

Paperwork Reduction Act

The information collection requirements contained in the Notice of Contract Proposal for the Section 9005 Advanced Biofuels Payments Program published on June 12, 2009, were approved by the Office of Management Budget under emergency clearance procedures and assigned OMB Control Number 0570–0057. As noted in the June 12, 2009 notice, the Agency sought emergency clearance to comply with the time frames mandated by a Presidential Memorandum in order to implement the Program as quickly as possible, and that providing for public comment under the normal procedure would unduly delay the provision of benefits associated with this Program and be contrary to the public interest. Now, however, in accordance with the Paperwork Reduction Act of 1995, the Agency is seeking standard OMB approval of the reporting and recordkeeping requirements contained in this interim rule. In the publication of the proposed rule on April 16, 2010, the Agency solicited comments on the estimated burden. The Agency received no comments in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, the Agency will publish a rule in the **Federal Register**.

Title: Advanced Biofuels Producer Payment Program.

OMB Number: 0570–NEW.

Type of Request: New collection.

Abstract: The collection of information is vital to Rural Development to make wise decisions regarding the eligibility of advanced biofuels producers and their products in order to ensure compliance with the provisions of this Program and to ensure that the payments are made to eligible producers and advanced biofuels and is necessary in order to implement this Program.

Advanced biofuel producers seeking to participate in the Program must enroll in the Program by submitting an Agency-approved application, including documentation to support the amount of eligible advanced biofuels reported in the application and biofuel certifications. Once approved for participation, the producer and the Agency enter into an Agency-approved contract. The advanced biofuel producer will then submit an Agency-approved form to request payment. These requirements are stated in the interim rule.

The estimated information collection burden hours has increased from the proposed rule by 426 hours from 2,273 to 2,699 for the interim rule. The majority of this increase is attributable to an increase in the number of expected applicants and participants, as the result of several factors including expanding the program to non-rural biofuel facilities and to foreign-owned biofuel facilities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.8 hours per response.

Respondents: Advanced Biofuel Producers.

Estimated Number of Respondents: 393.

Estimated Number of Responses per Respondent: 9.4.

Estimated Number of Responses: 3,704.

Estimated Total Annual Burden on Respondents: 3,115.

E–Government Act Compliance

Rural Development is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

I. Background

Rural Development administers a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing leadership, infrastructure, venture capital, and technical support that can support rural communities, helping them to prosper.

To achieve its mission, Rural Development provides financial support (including direct loans, grants, loan guarantees, and direct payments) and technical assistance to help enhance the quality of life and provide support for economic development in rural areas. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) contains several sections under which Rural Development provides financial assistance for the production and use of biofuels.

The Advanced Biofuel Payment Program addresses Section 9005 of the Farm Security and Rural Investment Act of 2002 as added by the Food, Conservation, and Energy Act of 2008, which authorizes the Secretary of Agriculture to "make payments to eligible producers to support and ensure an expanding production of advanced biofuels" by entering into contracts for the production of advanced biofuels to both support existing advanced biofuel production and encourage new production. To be eligible for payments, advanced biofuels produced must be derived from renewable biomass, excluding corn kernel starch, in a biorefinery located in the United States.

On April 16, 2010 [75 FR 20085], the Agency published a proposed rule for the Advanced Biofuel Payment Program. Comments were requested on the proposed rule, which are summarized in Section III of this preamble. Most of the proposed rule's provisions have been carried forward into subpart B of this interim rule, although there have been several significant changes. Changes to the proposed rule are summarized in Section II of this preamble.

Interim Rule. USDA Rural Development is issuing this regulation as an interim rule, effective March 14, 2011. All provisions of this regulation are adopted on an interim final basis, are subject to a 60-day comment period, and will remain in effect until the Agency adopts the final rule.

II. Summary of Changes to the Proposed Rule

This section presents changes from the April 16, 2010, proposed rule. Most of the changes were the result of the Agency's consideration of public comments on the proposed rule. Some changes, however, are being made to clarify proposed provisions. Unless otherwise indicated, rule citations refer to those in this interim rule. Changes to the proposed rule for the Advanced Biofuel Payment Program include:

1. Removing the citizenship requirement as an applicant eligibility requirement. In addition, the term "immediate family" was deleted because the term was only used in the context of the citizenship requirements.

2. Adding to the definition of "larger producer" and "smaller producer" provisions for determining whether an advanced biofuel producer of biogas or solid advanced biofuels is a "larger producer" or a "smaller producer." For biogas and solid advanced biofuel, this determination will be based on the production of an amount of energy considered by the Agency to be equivalent to 150,000,000 gallons of liquid advanced biofuel (15,900,000 MMBTU) per year.

3. Using the term "biofuel facility" instead of "biorefinery" to clarify that eligible advanced biofuels may be produced at facilities other than biorefineries.

4. Replacing the provision that would have allowed payment for an advanced biofuel used onsite with a requirement that an advanced biofuel must be sold as an advanced biofuel to a third party through an arm's length transaction in order to be eligible for payment (*see* § 4288.111(a)(4)).

5. Several revisions were made to application requirements in § 4288.120, most of which affect the certification provisions:

- Removing the supporting documentation requirements associated with the enrollment application;
- Removing the requirement for BQ–9000 certification;
- Clarifying the Renewable Identification Number (RIN) requirement;
- Revising "self-certify" to "certify" (*see* § 4288.120(a)(3)(iii);
- Revising the woody biomass documentation to apply to just National Forest system lands and public lands; and
- Revising the requirement for supporting documentation (§ 4288.120(a)(4)) to apply to all advanced biofuel producers, not just to those that project an increase in production and new producers.

6. Allowing the blender to issue a certificate of analysis (*see* § 4288.105(a)(3)), and adding a definition of the term "blender" to § 4288.102.

7. Changing the approach the Agency will use in making a Government payout to deferring payment pending resolution of the review rather than

making the payout prior to resolution of the review (*see* § 4288.135(b)(2)).

8. Revising the introductory text to § 4288.136 to reference §§ 4288.134 and 4288.135.

9. Numerous revisions were made to the payment provisions found in § 4288.131, including, but not limited to:

- Providing for payments for actual production and incremental production;
- Calculating actual production payment rates each quarter rather than on an annual basis;
- Determining payments each quarter based on the actual amount of advanced biofuel produced in the quarter;
- Requiring participating producers to submit payment applications each quarter such that if a producer does not submit a payment application by a quarter's due date, the producer will not receive payment for that quarter; and
- Adding payment limitations for advanced biofuels produced from forest biomass.

Several additional conforming changes were made in this section to reflect these changes, including deleting the definition for base production.

As summarized above, the Agency has significantly revised the payment provisions associated with the Advanced Biofuel Payment Program from the payment provisions that were proposed. The Agency received a number of comments that suggested different ways to balance competing concerns that arise in this program. The revisions made are intended to take into account a number of concerns, some of which are competing concerns, including:

- Whether we should offer additional payments for incremental over base production or offer a single payment approach that provides one payment rate for all production;
- Determination of base production amounts;
- Determination of incremental production amounts;
- Does this program distort the other markets for certain advanced biofuels feedstocks and if so, should the payment rates for biofuels using these feedstocks be adjusted;
- The importance of maintaining current production capacities verses encouraging incremental production and should the balance between these two program goals be adjusted over time.

The Agency further took into account a number of factors in responding to comments and making program adjustments including:

- The authorizing statute goal to support both existing and incremental production;
- Use incremental payments to encourage increases by producers that consistently produce advanced biofuels because such increases are likely to be sustained;
- The Managers' Conference Report in which the Managers encourage the Secretary to consider competing market outlets when establishing the payment rate for forest biomass feedstocks used to produce advanced biofuels;
- Aligning this program with other Federal programs addressing advanced biofuels consistent with the legislative authorization of this program;
- The current economic climate for advanced biofuels and how that climate may change over time;
- The administrative complexity of implementing a payment program; and
- The Agency experience and lessons learned from the existing implementation of the program under the Notices of Contract Proposal for fiscal years 2009 and 2010.

Based on the above concerns and factors, the revised payment provisions, as found in the interim rule, are summarized below.

Two tier payments. The Agency is retaining a two-tiered payment approach, but with changes from the proposed rule. By implementing this two-tiered approach, the Agency continues to encourage both existing and new advanced biofuel payments.

- *Actual Production Payments.* These payments would be made for actual production in the fiscal year for which payments are sought. These payments will be made on a quarterly basis.
- *Incremental Production Payments.* These payments would be made for incremental production. These payments will be made once, at the end of the fiscal year. In order to receive incremental production payments, the facility must have produced an eligible advanced biofuel in the year preceding the fiscal year in which payment is sought, the facility must have had fewer than 20 days (excluding weekends) of non-production of eligible advanced biofuels in the preceding year, and the quantity of eligible advance biofuels in the fiscal year in which payment is sought must be greater than the actual quantity of eligible advanced biofuel produced in the preceding year. This requirement focuses the incremental payments on encouraging production increases from producers that are likely to sustain such increases over time instead of producers who widely vary production from year to year based on short term market conditions.

Incremental production is being defined as "The quantity of eligible advanced biofuel produced at an advanced biofuel biorefinery in the fiscal year for which payment is sought that exceeds the quantity of advanced biofuel produced at the biorefinery over the prior fiscal year." For example, if a facility produced the equivalent of 100 million BTUs of eligible advanced biofuel in FY2010 and the equivalent of 120 million BTUs of eligible advanced biofuel in FY2011, 20 million BTUs would be eligible for incremental payment in FY2011.

By determining incremental production in this manner, the Agency is removing the need to project productions and the incentive to over-estimate production. These provisions will also address concerns about production manipulation to achieve higher payments (*e.g.,* shut down one year and start up the next).

However, not all facilities and advanced biofuels would be eligible for incremental production payments. Specifically:

- If a facility did not produce any advanced biofuel in the year prior to the fiscal year in which payment is sought, it would not be eligible for incremental production, but would still be eligible for actual production payments.
- If a facility produced eligible advanced biofuel in the year prior to the fiscal year in which payment is sought, but the facility has 20 or more days (excluding weekends) of non-production, it would not be eligible for incremental production, but would still be eligible for actual production payments. For example, in the previous example, if the facility that produced the equivalent of 100 million BTUs in FY2010 has 40 days of non-production of eligible advanced biofuel, then the facility would not be eligible for incremental payments in FY2011 and all 120 million BTUs produced in FY2011 would be paid using the actual production payment provisions.
- If the advanced biofuel is a solid advanced biofuel produced from forest biomass, the advanced biofuel would not be eligible for incremental production, but would still be eligible for actual production payments.

Level of available program funds. The interim rule contains several provisions that identify the general amount of funds that will be available each fiscal year. Specifically:

- In FY2010, the Agency will allocate 80 percent of the available program funds to pay for actual production and 20 percent to pay for incremental production.
- In FY2011, the Agency will allocate 70 percent of the available program funds to pay for actual production and

30 percent to pay for incremental production.

• In FY2012, the Agency will allocate 60 percent of the available program funds to pay for actual production and 40 percent to pay for incremental production.

• In FY2013 and beyond, the Agency will allocate 50 percent of the available program funds to pay for actual production and 50 percent to pay for incremental production.

• Each fiscal year, not more than 5 percent of the available program funds will be paid to larger producers.

• Each fiscal year, not more than 5 percent of the program funds will be paid for solid advanced biofuels produced from forest biomass.

• All actual production payments and the incremental production payments will be made so as to expend all of the funds available to each.

The implementation of these provisions will result in calculating a single actual production payment rate each quarter that will be applied to all producers and a single incremental production rate at the end of each fiscal year that will be applied to all eligible producers with eligible incremental production. Either payment may need to be adjusted, however, if either the larger producer payment limit of 5 percent of available program funds or the solid advanced biofuel produced from forest biomass payment limit of 5 percent of available program funds is reached.

In developing this approach, the Agency determined that, for the next several years, a major focus of the program must be to assist the advanced biofuels industry in maintaining its production capacity while the economy recovers. As the economy improves over the next several years as the demand for energy in general increases, the Agency believes it is appropriate to shift the focus of the program to encourage new production. The payment formula in the interim rule reflects this view.

Type of advanced biofuel produced. While the authorizing statute does not limit the type of advanced biofuels eligible for payment under this program, there are two concerns that the Agency is addressing in the revised payment provisions that will affect payment based on the type of feedstock used and on the type of advanced biofuel.

First. As noted above, the Manager's Conference Report encourages the Secretary to consider competing market outlets when establishing the payment rate for forest biomass feedstocks used to produce advanced biofuels. To address this, the Agency is implementing the following provisions:

• For liquid and gaseous advanced biofuels made from forest biomass, the BTUs calculated from such advanced biofuels will be discounted by 10 percent. The effect of this will be to reduce payment that such advanced biofuels would receive compared to the same advanced biofuel made from a different feedstock.

• For solid advanced biofuels made from forest biomass, the BTUs calculated from such advanced biofuels will be discounted by 85 percent. The effect of this will be to reduce payment that such advanced biofuels would receive compared to the same advanced biofuel made from a different feedstock.

• As noted previously, any solid advanced biofuel produced from forest biomass would be ineligible for incremental production payments, but would still receive actual production payments.

• Each fiscal year, not more than 5 percent of the program funds will be paid for solid advanced biofuels produced from forest biomass.

In developing these BTU discounted rates for advanced biofuels produced from forest biomass, the Agency is encouraging the use of forest biomass for the creation of advanced biofuels consistent with Congress' concern that alternative uses of these feedstocks should be considered. Given that nearly all of the forest biomass feedstocks have alternative uses, the Agency has decided to focus the program on the encouragement of the creation of new biofuels from forest biomass as opposed to simply finding new ways to burn off the feedstock. In determining the relative BTU discount rates, the Agency does not want to discourage the use of forest biomass for new types of advanced biofuels and, thus, is setting a nominal discount rate for liquid and gaseous advanced biofuels produced from forest biomass. However, in the case of solid advanced biofuels produced from forest biomass, the Agency has determined that the goals of this program are not promoted by making substantial payments to such advanced biofuels. Therefore, the use of forest biomass as a feedstock that simply creates a solid fuel to be burned will receive a substantially higher BTU discount rate, which will result in a substantially smaller payment compared to other eligible advanced biofuels. In addition, such advanced biofuels will not be eligible for incremental payments and the total payments to these advanced biofuels will not exceed 5 percent of total available program funds in any one fiscal year.

Second. To encourage a more favorable environmental outcome of this program, the Agency is providing an additional economic incentive for the production of advanced biofuels that use technologies and feedstocks that minimize greenhouse gas emissions and carbon usage. In order to carry this out, the Agency is providing an additional 10 percent BTU bonus if the advanced biofuel meets an applicable renewable fuel standard as identified by the U.S. Environmental Protection Agency (EPA). The Agency also believes that this change will better align this program with other Federal programs addressing advanced biofuels consistent with the legislative authorization of this program.

III. Summary of Comments and Responses

The proposed rule was published in the **Federal Register** on April 16, 2010 (75 FR 20085), with a 60-day comment period that ended June 15, 2010. Comments were received from 1,090 commenters yielding over 165 individual comments, which have been grouped into similar categories. Commenters included members of Congress, Rural Development personnel, trade associations, State agencies, universities, environmental organizations, and individuals. As a result of some of the comments, the Agency made changes in the rule. The Agency sincerely appreciates the time and effort of all commenters. Responses to the comments on the proposed rule are discussed below.

On-Site Use Eligibility

Comment: Several commenters supported allowing advanced biofuels used for on-site purposes to be eligible for payments under this program. A number of different reasons were cited:

• Broadening payments to cover on-site usage of eligible advanced biofuels would encourage increasing production and use of advanced biofuels, which is exactly the goal of the program. The Advanced Biofuel Payment Program's goal of developing a stable renewable energy industry to supply increasing amounts of the country's energy needs, plus the implicit objective of reducing greenhouse gas ("GHG") emissions in the production and use of advanced biofuels is equally met whether the advanced biofuel is sold and used as a transportation fuel blend component, sold and used as non-transportation renewable energy, or is used on-site by the advanced biofuel producer to displace fossil fuel derived energy to meet process energy needs.

• One object of the program is to expand beyond transportation fuels. On-

site stationary fuel requirements are an appropriate use of funds.

• There are a number of ethanol biorefineries that have the potential to generate renewable biogas to offset up to 100 percent of current fossil fuel usage for process energy and/or electricity. It would be extremely difficult and impractical to require the biogas generated to be put into a commercial pipeline and utilized off-site. There would be unnecessary costs to further refine the gas to meet commercial natural gas line specifications and to pressurize the gas enough to put into the higher pressure commercial mains that have pressures as much as 600 psi or more. It would be more practical to utilize the biogas on-site as it can be generated and used without extensive refinement and pressurizing. Plus it can be consumed entirely for process energy demands at a typical ethanol biorefinery. However, the option for a facility to produce biogas that could be used commercially off-site or to an adjacent facility should remain open for those facilities and agreements that could be established to utilize the advanced biofuel elsewhere.

• The production of advanced biofuels should be encouraged whether the use is in transportation fuel or for internal use. For example, sweet sorghum to ethanol facilities will produce gaseous advanced biofuels via anaerobic digesters. This biogas will be used internally in the facility and should be eligible for payment.

These commenters recognize the need to be able to verify the on-site usage and made recommendations on how this could be done.

One commenter proposes that on-site usage of advanced biofuels by the advanced biofuel producer be monitored and verified with flow meters installed ahead of the point of usage on-site. Such flow meters can be totalized to properly account for quarterly usage rates.

Two commenters state that on-site usage should be monitored by installation of meters that have been verified for accuracy by an independent third party. The meters should be checked annually by an independent third party, and a report by the independent third party should be submitted along with the other necessary documentation to secure a payment under the program.

One commenter notes that all legitimate fuel manufacturers must record all inputs and outputs. A simple mass balance approach would verify the production of fuel. Use of the fuel is not a requirement for the program regardless of the kind of fuel produced. Thus, it is the production of fuel that is verified by USDA not the use of fuel regardless of where or even if the fuel is ultimately used.

One commenter believes that entities that utilize the advanced biofuel produced for internal purposes should be entitled to Program payments. There are a number of ethanol biorefineries that have the potential to generate renewable biogas to offset up to 100 percent of current fossil fuel usage for process energy and/or electricity. It would be extremely difficult and impractical to require the biogas generated to be put into a commercial pipeline and utilized off-site. There would be unnecessary costs to further refine the gas to meet commercial natural gas line specifications and to pressurize the gas enough to put into the higher pressure commercial mains that have pressures as much as 600 psi or more. It would be more practical to utilize the biogas on-site as it can be generated and used without extensive refinement and pressurizing. Plus, it can be consumed entirely for process energy demands at a typical ethanol biorefinery. However, the option for a facility to produce biogas that could be used commercially off-site or to an adjacent facility should remain open for those facilities and agreements that could be established to utilize the advanced biofuel elsewhere.

Any on-site usage should be verified utilizing standard flow meter instruments that are commonly utilized by the natural gas industry. Calibration should be completed according to the manufacturer's recommendations or an equivalent method. An independent third party could be utilized for accuracy verification along with a letter sent to USDA that documents the meter accuracy and certifies the amount of biogas generated for payments. Any biogas amount sent to a flare should not be considered for payment as that amount is not offsetting fossil fuel usage.

Response: The Agency agrees the focus of the program is increasing the production of advanced biofuels, with the statute authorizing this program requiring that payment be made to encourage the support and expansion of production of advanced biofuels. The Agency has determined that the best way to implement the goals of this program is to provide funds to the production of advanced biofuels that enter the marketplace and are sold on the market for use as an advanced biofuel. Many entities may produce biofuels that qualify as an advanced biofuel, but do so with the intent to use the biofuel on-site to, for example, heat or power their business. Most of these entities would not be considered advanced biofuel producers. Therefore, the Agency is not extending this program to pay for advanced biofuels that are used on-site.

Comment: One commenter recommends that advanced biofuel producers who do not sell to the public not be rewarded because the only ones benefiting are the ones making and using their own fuel, but it is the public's tax dollars paying for the program.

Response: For the reasons cited in the response to the previous comment, the Agency agrees with the commenter, and has revised the rule text to require that the advanced biofuel be sold to a third party through an arm's length transaction.

Comment: One commenter requests that biogas production by an ethanol plant be eligible for payment under this program. The commenter states that it plans to produce cellulosic ethanol and biogas for its cellulosic ethanol process. The ethanol will be marketed, and the commenter understands would be eligible for payments under this USDA program. The commenter believes that biogas production by an ethanol plant should also be eligible for payments under this program. According to the commenter, statistics on production, usage, and marketing of the biogas can be tracked and verified.

Response: If the biogas is produced from renewable eligible feedstock producing renewable energy, the Agency would pay on that biogas if it qualifies as an advanced biofuel and is sold in the marketplace as an advanced biofuel through an arm's length transaction to a third party. If the biogas, however, is used on-site, it is not eligible for payment under this program for the reasons discussed above.

Follow Intent of Program

Comment: One commenter, while noting that the proposed rule is clear in its intent to encourage both the introduction of incremental advanced biofuels into the marketplace and support of existing production, believes that the proposed rule needs to be more explicit with respect to enabling long term solutions that address our greatest energy policy need, which can be summed up as "low carbon transportation fuels." Specifically, the commenter suggests that, in developing renewable transportation fuels that will gain broad acceptance and avoid public and environmental scrutiny, it is important to consider the following:

(1) Establishing an inventory of truly sustainable biomass feedstock.

(2) The ability to integrate bioenergy crops into the agricultural sector as an incremental opportunity without social or environmental consequences.

(3) Creating fuels fungible to the marketplace that can displace imported sources and reduce energy dependence.

Response: The purpose of the program is to provide a payment to producers who produce advanced biofuel. With respect to comment #1 above, the Agency has determined that establishing an inventory of truly sustainable biomass is more appropriate for other energy programs. With respect to comments #2 and #3 above, the Agency is satisfied that the concerns expressed in those comments are reflected in the statutory definition of advanced biofuel and, therefore, these concerns do not need to be further considered by the Agency at this time.

Comment: One commenter believes that the proposed rule is following the intent of the program except that corn starch ethanol production should not be excluded as a potential advanced biofuel. The commenter recommends that it be classified as an advanced biofuel if the lifecycle GHG analysis meets the 50 percent GHG reduction requirement for an advanced biofuel. If the intent is to encourage the production of advanced biofuels and, if corn starch to ethanol facilities can meet the definition of an advanced biofuel by incorporating measures to reduce GHG emissions, then those facilities should not be excluded.

Response: The authorizing statute defines advanced biofuel, in part, as "fuel derived from renewable biomass other than corn kernel starch." Because the authorizing statute specifically excludes corn kernel starch for the definition of advanced biofuel, the Agency cannot include it in this program.

Payment Rates Appropriateness—Base Production Versus Incremental Production

Comment: Commenters do not support different payments rates for base production and incremental production and recommend eliminating this differentiation. These commenters believe that providing different payments levels for base and incremental production makes the program more complex than necessary, and could create inequity among producers. According to the commenters, establishing a differential payment could potentially create an inequity between competitors by unfairly punishing a producer who maintained continuous production during difficult economic conditions, while rewarding a producer who shut down and restarted. Two commenters are concerned that a higher payment for incremental production will create an incentive to produce for a year, shut down, and then return to production.

The differential payment and the calculations for producers based on the number of months in existence also creates an unnecessary complexity to the administration of the program. USDA's method for calculating base and incremental production levels under the NOCP is convoluted and confusing. Providing equal payment levels for base and incremental production would result in a simpler, more efficient, fair and equitable program.

Response: The Agency appreciates the concerns raised by the commenters, which the revised payment provisions address, which are presented earlier in Section II of this preamble. Even though the Agency is retaining a two-tiered payment system, the provisions associated with the determination of production and the payment rate calculation process for actual production and incremental production have been simplified. The same actual production payment rate and the same incremental production payment rate would be calculated for all participants.

As described earlier in the preamble, under the new payment provisions, there is no longer a set payment differential between "base" production and "incremental" production, which was the source of concern to many of the commenters. Instead, one set of payments will be made (quarterly) based on actual production in the fiscal year for which payment is sought and the other set of payments will be made (at the end of the fiscal year) based on the production in the fiscal year that exceeds the quantity of actual production in the preceding fiscal year (referred to as "incremental" production). In addition, the funds available for actual production payments and for incremental production payments are identified each fiscal year.

The Agency acknowledges that the new provisions will also result in uncertainty as to how much a producer will receive from actual payment production and from incremental production, because there is no way to predict all of the variables that will affect payments, including how many producers will participate, how much will be produced, and how much production will be eligible for incremental production payments. However, by removing the defined payment differential, any "inequity" that might have existed under the proposed payment provisions among producers who maintained continuous production and those who did not would be significantly reduced, if not eliminated.

Comment: Numerous commenters support replacing the proposed two-tier payment system with a single level of payment for all eligible fuel for the reasons discussed in the following paragraphs. One of the commenters noted that the two-tier payment system should be eliminated at least for the biodiesel producers, because, according to this commenter, there is no justification to incentivize new capacity in the biodiesel/renewable diesel industry where capacity dwarfs the feedstock availability and likely demand under the Renewable Fuel Standards 2 (RFS–2).

According to the commenters, there are several benefits to this approach. First, the commenters note that different payments for base and incremental production makes the program more complex than necessary and that a single level of payment will simplify administration of the program for both USDA and participants. This will also eliminate any potential incentive to engage in gaming of production totals to maximize incremental payments. One of the commenters notes that, based on this recommendation, for example, for the Fiscal Year 2010 program, one payment would be given for the gallons produced between October 1, 2009, and March 30, 2010, and second payment for production from April 1, 2010 to September 30, 2010 period without any incremental gallons changes.

Second and more importantly, the two-tier approach could create inequities among producers, while a single level of payment (combined with the removal of the rural area and domestic ownership requirements) will provide a level playing field for all advanced biofuels producers in the marketplace; a differential that provides 5 times greater payment for incremental production is very significant and would create an uneven playing field between competing plants. The five-to-one payment differential provided for in the proposed rule has the potential to put otherwise equivalent advanced biofuels of identical quality and cost at a significant disadvantage in the highly competitive, low margin, high volume fuels marketplace. Equitable treatment under the program is consistent with the goal established by Congress of supporting the existing production as well as new production of existing advanced biofuels.

Commenters note that the biodiesel industry has built significant capacity, much of which is not currently being

utilized. A differential that provides 5 times greater payment for incremental production is significant and would create an uneven playing field between competing plants.

A third commenter points to an approach that makes program payments based on total gallons produced rather than the "base production" versus "incremental production" payment method currently included in the proposed rule. As the biodiesel industry is still in the infant stages, the commenter maintains that it is just as important for this program to help ensure the continued operation of existing facilities as it is to encourage expanded production or new facilities. According to the commenter, elimination of the program's two-tiered payment structure would promote more equal treatment for each gallon of biodiesel produced in the U.S.

One commenter states that all advanced biofuels under this program should be treated similarly. According to the commenter, differentiated payments to certain advanced biofuels and not others will create artificial market distortions. These distortions are created because the Agency is picking winners and losers in the advanced biofuels arena based on arbitrary requirements. The market will then reward those who luckily meet the requirements or can adjust their production to meet the requirements. Some will be disadvantaged because the rules are changing after the plant has been built or commenced construction and cannot be changed (*e.g.,* location). Advanced biofuel produced in the U.S. and its territories is considered biofuel by the marketplace. It does not depend on the amount of biofuel produced in the previous year at the production plant. For these reasons, the support differential between incremental and base production should be eliminated and there should be no prior year production restrictions on the payments.

One commenter understands the importance of enabling new production and the spirit of incentivizing incremental production and believes that this mechanism should work to incentivize additional production of advanced biofuels over current volumes. However, the commenter is concerned that the proposed rule seems to incentivize reduced production in the base year, so the facility can take advantage of a 5 times multiplier in the subsequent year. The commenter believes this would not be productive for the advanced biofuel industry. The proposal states that "for a biorefinery that has been in existence less than 12 months before October 1 of the sign-up fiscal year or that begins producing eligible advanced biofuels on or after October 1 of the sign-up fiscal year, there is no incremental production; all production for that sign-up fiscal year will be considered base production." The commenter does not believe this is, or should be, the intention of the program and recommends that the Agency revisit the definition of base production rate so that facilities coming online will be incentivized to bring as much capacity into production as early as possible.

One commenter believes that a two-tier system produces significant administrative problems especially regarding the issue of when the advanced biofuel is produced. According to the commenter, the proposed ability to claim a high tier payment rate versus a low tier payment rate simply encourages program participants to game the payment system. The commenter, therefore, encourages the Agency to replace the proposed two-tier payment rate with a single payment rate, which will allow easier and more accurate administration by all parties while at the same time discouraging gaming the program.

The commenter suggests that instituting a single payment rate helps level the playing field between competitive producers. The proposed two tier system will, at times, allow some producers to enjoy a five-to-one payment advantage over a competitor producing an identical fuel.

The commenter further states that a single payment level also delivers equal treatment under the program, which the enacting statute provides by supporting both existing and new production of advanced biofuels.

Response: The Agency is maintaining a two-tier system to support the authorizing statute's goal of supporting both existing and incremental production. However, the implementation of this two-tier system is significantly different from what was in the proposed rule and these changes address the concerns expressed by the commenters.

As discussed in the response to the previous comment, the new payment provisions make the calculation of payments easier than under the proposed payment provisions, make the calculation of incremental production more objective and easier to calculate, and eliminate the "5 times the base production rate" provision for incremental payments, which creates the more level playing field that the commenters are looking for.

With regard to concern over the potential gaming under the proposed payment provisions by under reporting production to maximize incremental production, the payment provisions have been revised to eliminate this. To receive incremental payments under the interim rule, an advanced biofuel facility must have produced an eligible advanced biofuel in the year preceding the fiscal year in which payment is sought and must not have had more than 20 days (excluding weekends) of non-production of eligible advanced biofuels. Further, any advanced biofuel facility that did not produce an eligible advanced biofuel in the year preceding the year in which payment is sought would not be eligible for incremental payments. These provisions will eliminate the "gaming" for reporting production and will eliminate the specific concern expressed about "unfairly punishing a producer who maintained continuous production during difficult economic conditions, while rewarding a producer who shut down and restarted."

The payment provisions in the interim rule divide the program funds between actual production and incremental production, with no pre-determined relationship between payment rates ($/BTU). Thus, there is no pre-determined relationship between actual production payments and incremental production payments. Incremental production payments may be higher, lower, or the same as actual production payments. This further reduces any incentive to try to "game" payments under this program and results in a more equitable program to all participants as the economy seeks to recover.

Furthermore, as revised, the program provides more funds to actual production in the earlier years relative to incremental production in order to assist all facilities through the current economic difficulties facing the country, and provides more funds in the later years to encourage expansion.

With regard to the suggestion that a two-tiered system be eliminated at least for the biodiesel producers, the Agency disagrees with the commenter, because the rule needs to look at the long term and not at the short term market conditions, as the commenter is doing.

Finally, with regard to the comment that "all advanced biofuels under this program should be treated equally," the new payment provisions address the issues identified by the commenter by removing the location requirement and adjusting the calculations associated with actual production and incremental production. However, the Agency notes

that the new payment provisions adjust payments if the advanced biofuel is produced from forest biomass or if the advanced biofuel meets an applicable renewable fuel standard as identified by the EPA. The adjustment for using forest biomass is in response to the Managers Conference Report associated with the authorizing statute. The adjustment if the advanced biofuel meets an applicable renewable fuel standard as identified by EPA is in response to encouraging a more favorable environmental outcome of this program and aligning it with other Federal programs addressing advanced biofuels consistent with the legislative authorization of this program.

Comment: One commenter supports a revision to the application process that eliminates the projected incremental amount from the annual application (Form RD 4288–1) submission. While the commenter believes that the differential payment between base and incremental production should be eliminated from the program, even if the differential payment remains, the commenter believes that it is unnecessary to ask producers to attempt to project their production given the vast uncertainty that exists in the biofuels market today. Furthermore, the commenter claims that, as proposed, producers would be penalized if they underestimated their projected production, as any amount produced above the projected amount is not eligible for payment. According to the commenter, this incentive for applicants to vastly overestimate production is not useful to USDA in pre-determining the expected payment rates and could lead to under-subscription of the program funds when the final, actual production amounts are reported and verified.

Another commenter also believes that each producer will report the highest possible production for the upcoming fiscal year to ensure that all potential production from the production facility will be eligible to receive the subsidy. Therefore, the volumes used for the determination of the payment amounts by the USDA will be overstated. This will reduce the payout for all producers and result in funds being left over at the end of each fiscal year. This commenter suggests a solution to this problem would be to allow for the modification of the payment rate in the fourth fiscal quarter after the receipt of all production reported in Form RD 4288–3. This adjustment would only be made if the initial payment rate results in excess funds being available if the initial payment rate is used for fiscal year fourth quarter production. If excess funds are available, then the modification would result in an increase in the payment rates to producers. The increased payment rate would be calculated similarly to the original determination, except that the total BTUs in the calculation would be based on actual production from the total fiscal year as reported on all Form RD 4288–3 submitted to the USDA for that fiscal year. After calculation of the increased rate for all production in the fiscal year, then each producer would be paid for their fourth quarter production at the new rate and for production in the first three quarters at the difference between their increased rate and the original rate. The advantages of this recalibration at the end of the fiscal year are to ensure that all funding allocated by Congress is used in the intended year and to eliminate the necessary bias to overstating production in the estimates submitted on Form RD 4288–1 at the beginning of the fiscal year.

One commenter also suggests that USDA remove the requirement from the current Form RD 4288–1 that participants estimate future incremental production. Because producers cannot receive payments for amounts beyond this estimate, the commenter believes that there is an incentive to overestimate future incremental production, which in turn makes it difficult for USDA to accurately determine payment rates.

As an alternative, several commenters support having producers report their previous year production on Form RD 4288–1 and actual production on Form RD 4288–3.

Response: The Agency agrees that initial projections for Form RD 4288–1 are difficult to make given the market forces in the biofuel industry and has eliminated the requirement to submit projections for this program. The Agency acknowledges having payments based on actual production will improve the program. Thus, under the interim rule, payments will be made, in part, quarterly on actual production.

Comment: One commenter recommends that, should the Agency retain the requirement on Form RD 4288–1 that participants project future production, the Agency should then utilize a reconciliation process at the end of the fiscal year that allows for modification of the payment rate in the fourth quarter after the receipt of all production reported on Form RD 4288–3. This adjustment would only be made if the initial payment rate utilized in the first three quarters of the year would result in excess funds being available if applied to actual fourth quarter production. If excess funds are available, then the modification would result in an increase in the payment rates to producers. The increased payment rate would be calculated similarly to the original determination, except that the total BTUs in the calculation would be based on actual production from the total fiscal year as previously reported on Form RD 4288–3 in the preceding quarters. After calculation of the increased rate for all production in the fiscal year, each producer would be paid for their fourth quarter production at the new rate and for production in the first three quarters at the difference between their increased rate and the original rate. Providing for this sort of reconciliation in the fourth quarter will ensure that all funding allocated by Congress is utilized while minimizing the incentive to overstate estimated production at the beginning of the fiscal year.

Response: The Agency acknowledges that the payment methodology contained in the proposed rule may not utilize all funds and, therefore, revised the rule to ensure that all funds available to the program each fiscal year are expended for that fiscal year. Under the new payment provisions, participants will not be required to project future production. Payments for actual production will be distributed quarterly and payments for incremental production will be paid after the end of each fiscal year. There will be no "carry over" funds under the revised payment provisions.

Comment: One commenter states that, when signing up for the program, applicants have to identify their production estimates and that they will get paid off the estimates. If an advanced biofuel producer goes over the estimated production, the advanced biofuel producer will not get paid for the extra production. The commenter then asked: Isn't the purpose to have more production each year, to encourage new production, and pay a higher rate for incremental production? Thus, the commenter believes that advanced biofuel producers should be paid for all production, not just estimated.

Another commenter states that it appears that an advanced biofuels producer would be unable to predict its advance biofuels payment for a given year because the incentive is based on funds available and the number of eligible producers. The commenter, therefore, recommends that the Agency offer at least a range of incentive amounts per gallon so that biorefineries may plan.

Response: While the commenter seems to misunderstand the proposed payment provisions (payments will not be made based on estimated

production), the Agency acknowledges the comments and revised the payment methodology to clarify that payments will be made based on actual production and producers will be paid for all actual eligible advanced biofuel production.

The Agency disagrees with the comment to provide a range of incentive payment on a per gallon basis, because it is not possible to do so given the variables associated with making payments. Such variables include the number of producers participating in the program each year, the quantity of eligible advanced biofuels produced in the fiscal year, and the quantity of advanced biofuels eligible for incremental production payments. By specifying each fiscal year the level of funds that will be available for actual production payments and for incremental production payments, some additional information is provided to producers to assist in their planning.

Alternate Approaches in a Tiered Approach

Several commenters suggested possible modifications to the two-tiered approach.

Comment: One commenter suggests that, if there is to be a differential payment that applies to all eligible advanced biofuels, the commenter recommends that the base production be equal to each facility's peak production and never go lower. This would reduce the incentive for a producer to start up and shut down to take advantage of a higher Bioenergy Program payment.

Response: The Agency agrees that "base" production as it related to incremental production needs to be revised, but disagrees that it should be equal to a facility's peak production. As noted previously, the Agency has revised the payment provisions to provide payment for actual production and incremental production. Because incremental production is only paid for production over the previous year's actual production, provided the facility produces an advanced biofuel with no fewer than 20 days (excluding weekends) of non-production, any incentive for the producer to start-up and shut down is removed.

Comment: One commenter suggests that, if the Agency believes that incremental payments rates are necessary for new fuels such as cellulose ethanol, such payment differentials should be confined to such fuels. If the object of differential payments is to incent new technology such as cellulose ethanol, USDA could implement a two tier payment program for non-biodiesel and non-renewable diesel. According to the commenter, biodiesel and renewable diesel have no need for incenting new capacity or new production when there is already in an excess capacity situation.

Response: As discussed in a previous response, the Agency has revised the payment provisions in the rule. Rather than including provisions that call out specific types of advanced biofuels for preference, the Agency has revised the payment provisions, as described earlier, to discount the BTUs associated with advanced biofuels produced from forest biomass and to provide "bonus" BTUs if an advanced biofuel meets an applicable renewable fuel standard as identified by the EPA. By doing so, the Agency is encouraging the production of all other types of advanced biofuels.

With regard to the commenter's concern about the excess capacity situation associated with biodiesel and renewable diesel, the phased in payment provisions to increase the percentage of funds for incremental production from 20 percent to 50 percent is designed to help address the current situation of over-capacity; that is, the Agency expects that as the economy improves, the over-capacity situation identified by the commenter will be significantly reduced.

Comment: Two commenters suggest that, if the differentiation of payments based on Base and Incremental Production is maintained, then a biorefinery that began production in the previous fiscal year, but not produced for all of that fiscal year, should not have all of its production count as base production. The goal of the program is to incentivize incremental production. The production from the previous fiscal year should be used as base production. Then the production above this base production would be incremental production because this volume is incremental to the marketplace and should be counted as such. One of the commenters also states that all volume from a new production facility is incremental production (0 production the year before) to the marketplace and should be counted as such.

Two other commenters believe that an incremental rate of three to five times is an appropriate stimulus for expanding production, while still allowing for a base payment rate that will provide stability to existing producers. These commenters do not support a larger incremental payment (as raising the incremental rate will lower the base rate) because a new producer will have his first year of production counted as base production. This seems to penalize new producers from entering into production versus existing producers expanding their current production. The commenters believe that new production, whether from new or existing biorefineries, should be paid at the incremental rate. One of the commenters points out that the first sweet sorghum to ethanol facility that is proposed to come into production will begin producing advanced biofuels in December 2011. This will mean that three quarters in the 2012 fiscal year will be paid at base production instead of incremental production. A new facility has its greatest cash flow needs at the beginning of operation, not a year later. By providing incremental payments to this new production, USDA can help provide this needed first year cash flow.

One commenter supports the policy goal of promoting increased biofuel production through a tiered payment system. However, the commenter believes the program is inappropriately focused on incremental production from existing facilities rather than production from new facilities. Under the proposal, incremental production would receive a payment five times larger than "base" production and production from new facilities would be considered "base" production in its first year. The commenter does not believe this is responsive to the policy goal of encouraging increased biofuel production. Indeed, it will perversely favor increased production at existing facilities to the detriment of new facilities producing second and third generation advanced biofuels. The commenter suggests that new facilities be treated as incremental production for the first several years, after which they would establish their baseline. It is revenue in these first several years that will be most critical to the nascent advanced biofuels industry.

Several commenters express concern over the provision for when a facility would be paid for its incremental production.

One commenter believes that waiting until year 2 to receive the incremental production rate discourages rather than encourages maximum production of new, advanced biofuels as soon as possible and during the first year of production. The commenter recommends that all production be considered incremental production unless the biorefinery is in operation as of the time of the NOCP.

One commenter expresses similar concerns, that the current definition of incremental production does not encourage new capital investment to build new facilities or to increase the capacity at current facilities. The commenter recommends that base

production be identified as production from plants completed prior to October 1, 2010, and that incremental production be identified as production coming from new facilities or incremental capacity additions to current facilities completed after October 1, 2010.

One commenter also believes that as proposed the rule penalizes plants that expedite the introduction of new gallons to the market. The commenter states that new gallons should receive the incremental payment only once, but at least once, and should be eligible regardless of when the plant starts up. According to the commenter, facilities not in production for 12 months prior to the sign up period that come on line and quickly ramp up to capacity may be faced with a scenario where all of their capacity is base capacity. Thus, the rule seems to encourage reduced production in the base year, just so the facility can take advantage of a 5x multiplier in the subsequent year. In order to avoid discouraging rapid deployment, the commenter suggests that, for facilities not in production at least 12 months prior to the sign up period, base production should be calculated by dividing the amount of total volume produced up to the sign up period, by the number of months in operation, and multiplying by 12.

One commenter recommends revising the Agency's decision regarding the incremental production for biorefineries that have been in existence for less than 12 months. As proposed, such biorefineries will not be eligible for incremental payments. The commenter recommends reducing the timeline for incremental payments eligibility from 12 months to 6 months of production. According to the commenter, the first year of production is a critical time period for the biorefinery, such that financial support within this time period from this program will greatly increase the odds of commercialization success for the biorefinery. Recognition of the improvements in production through an increase in payment is an important step in that process.

Response: The Agency acknowledges the complexity of providing incentives to produce advanced biofuels in both the base and incremental scenario. As has been stated previously, the Agency has overhauled the payment provisions to provide for actual production and incremental production. Incremental production is paid only where a facility produced eligible advanced biofuels at an advanced biofuel facility that has no more than 20 days (excluding weekends) of non-production of eligible advanced biofuels in the year prior to the fiscal year in which payment is sought. The Agency has determined that the revised payment provisions are easier to implement and remove the estimation of production, such that a more objective system is used.

The key revision in the payment program relative to these comments is the proportion of funds that will be paid for actual production relative to incremental production. For example, for fiscal year 2011, 70 percent of available program funds will be available to actual production and 30 percent will be available for incremental production. Thus, in the earlier years of the program, more funds will be available to help existing biorefineries and new biorefineries than will be available for increasing production at existing biorefineries.

While the Agency has not revised the provision that a new facility would not be eligible for incremental payments, there is no longer a defined relationship between the actual production payment rate and the incremental production payment rate and the amount of funds paid to facilities for actual production versus incremental production is unknown. Because more program funds will be made available in the earlier years of the program for actual production than for incremental production, it is likely that a new facility would benefit more under the revised payment provisions than under the proposed payment provisions. Once the new facility is established, it would be equally eligible for incremental production payments.

Equivalent BTUs

Comment: One commenter agrees with a per BTU payment method, but is concerned that equivalent BTU payments for solid fuels and liquid fuels will put liquid fuels at a significant disadvantage. The commenter provides the following reasons:

The fuel pellet industry is mature and enjoys significant market-driven growth potential. The advanced liquid fuel industry is very much in infancy and growth is limited due to challenging economics. This program should place priority on enabling early adopters in the advanced liquid fuel sector, which will help attract additional investment needed for growth. Having an equivalent BTU payment between fuel types dilutes the funding pool for liquid fuel producers and provides incentives for "business as usual" in the fuel pellet space. Placing priority on liquid fuels also helps solve the very important public policy issue of filling the advanced biofuel carve out in RFS–2.

The proposed rule includes restrictions on liquid fuel producers, but not solid fuel producers. Without restrictions, the commenter assumes that the existing wood pellet industry will draw from the same funding pool as the "small" liquid fuel producer. Up against an established industry, the predominance of funding will be awarded to existing solid fuel production and do little to enable new advanced liquid fuels.

The costs to construct and operate liquid fuel plants are significantly higher than that of solid fuels. Even corn ethanol capital costs can be 5 times higher per BTU than the costs associated with building a pellet plant and operational costs are over 2 times higher on a per BTU basis. These ratios could easily double for a cellulosic advanced biofuel facility where capital costs are being reported at well over twice that of a corn ethanol plant (or nearly 10 times that of a pellet plant).

To establish a level playing field, the commenter recommends that payments across fuel types should have some proportion to investment and should favor transportation fuels that displace imported fuels, and offers the following suggestions:

- Separate the funding into pools for the different fuel types.
- Include solid fuel producers in the "large" producer category.
- Include a multiplier for liquid fuel BTUs.

Response: The Agency has revised the payment provisions to discount the BTUs from eligible solid advanced biofuels produced from forest biomass and this revision addresses the commenter's concern.

In addition, the Agency added the following provision to the rule: A producer who has a production of 150 million gallons of liquid advanced biofuel or 15,900,000 MMBTU of biogas or solid biofuel will be considered a "larger producer." The following paragraph presents the assumptions and methodology used to derive the 15,900,000 MMBTU equivalent.

The Agency concluded that the most appropriate way to determine equivalency for biogas and solid advanced biofuels when comparing to liquid advanced biofuels was to establish an "average" heat content for advanced biobased liquid fuels that could be used as a benchmark. The Agency chose to use a 50–50 mixture of typical ethanol and biodiesel fuel as the benchmark liquid fuel for the equivalency determination. The heat content value for the benchmark liquid fuel was derived from information presented on Table 13.1 (U.S. Default

CO_2 Emission Factors for Transport Fuels) of The Climate Registry's "General Reporting Protocol" published in May, 2008. Table 13.1 lists the heat content of ethanol as 0.084 MMBTUs per gallon and the heat content of biodiesel as 0.128 MMBTU per gallon. These two values were averaged (0.084 + 0.128 = 0.212/2 = 0.106 MMBTU per gallon) and multiplied by 150,000,000 gallons (150,000,000 gallons * 0.106 MMBTU/gallon = 15,900,000 MMBTU) to generate the BTU content of an amount of biogas and solid advanced biofuels that would be considered equivalent to the liquid advanced biofuels threshold for defining "larger producer."

Lastly, with regard to the suggestion that the program favor transportation fuels directly, the Agency has revised the rule to provide "bonus" BTUs to an advanced biofuel meets an applicable renewable fuel standard as identified by the EPA in order to achieve a more favorable environmental outcome of this program and to align it with other Federal programs addressing advanced biofuels consistent with the legislative authorization of this program. As a result of this provision, BTUs from such liquid advanced biofuels would receive a "multiplier" as suggested by the commenter.

Comment: Two commenters believe that, while the mechanism to develop a per BTU payment structure is sound, not all BTUs are created equal. According to the commenters, providing an equivalent BTU payment for woody biomass and liquid fuels products puts liquid fuels at a disadvantage. For example, the fuel pellet industry has reached a level of maturity that far surpasses the advanced liquid fuel industry.

The commenters believe that this program should place priority on enabling early adopters in the advanced liquid fuel sector because such priority may help the sector attract additional investment and provide for growth in the industry. Having an equivalent BTU payment dilutes the funding pool for liquid fuel producers and provides incentives for "business as usual" in the fuel pellet space. Placing priority on liquid fuels also helps solve the very important public policy issue of filling the advanced biofuel carve-out in RFS.

The rules as written establish clear restrictions on liquid fuel producers, but not solid or gaseous fuel producers. As such, the commenter assumes that all eligible solid fuel producers (*i.e.,* wood pellets) will draw from the same pool of funding as the "small" liquid fuel producer (less than 150 million gallons per year). Up against a mature industry, the predominance of funding will be allocated to solid fuel production and do little to enable advanced liquid fuels. The capital costs and conversion costs for liquid fuels are significantly higher than that of solid fuels. When comparing fuel pellet costs to corn ethanol costs (the cheapest comparison possible and any eligible advanced liquid fuel will certainly cost more than corn ethanol), capital costs are 4–5 times higher per BTU for liquid, and operational costs are 2–3 times higher. Payment ratios should have some proportion to investment and should favor liquid fuels that displace imported fuel feedstock.

For these reasons, should USDA evaluate advanced biofuels applying for this program based on BTU content, they should evaluate BTU content against like fuel types only, *i.e.,* liquid fuels against liquid fuels, solid fuels against solid fuels and gaseous fuels against other gaseous fuels.

Another commenter, in referring to the determination of the equivalency values for payment, urges the Agency keep the final rule for this program as simple and streamlined as possible and place priority on liquid fuels as a non-mature industry that displaces imported fuel feedstock. In support of this, they included their opinions that were submitted to EPA during the RFS rulemaking process surrounding equivalency values on energy content of liquid biofuels as follows:

"[The commenter] supports EPA's approach on basing the equivalency values on the energy content and renewable content of each renewable liquid fuel in comparison to denatured ethanol, consistent with the approach under RFS–1. This would be consistent with other approaches such as non-liquid renewable fuels (biogas and renewable electricity) which continue to be valued based on the energy contained in one gallon of denatured ethanol and would not be changed under EISA. A straight volume approach would create a disincentive for the development of new renewable fuels that have higher energy content than ethanol because of the higher cost to incorporate more carbon into your base molecule. The use of energy-based equivalence values could thus provide a level playing field in terms of the RFS–2 program's incentives to produce different types of renewable fuel from the available feedstock. The commenter agrees that the existence of four standards under RFS–2 does not obviate the value of standardizing for energy content, which provides a level playing field under RFS–1 for various types of renewable fuels based on energy content."

Response: The purpose of the program is to support and ensure an expanding production of advanced biofuels. In addition, dividing funding among the different types of advanced biofuels (beyond the provisions associated with advanced biofuels produced from forest biomass and advanced biofuels meet applicable renewable fuel standards as identified by the EPA) as suggested by the commenter, would add complexity to both the calculation of payments under and the administration of the program. In the interim rule, however, the Agency has established a value of 15,900,000 MMBTU of biogas or solid biofuel as being equivalent to 150,000,000 gallons of liquid advanced biofuel. As the program matures, the Agency will continue to evaluate the use of the equivalent BTUs basis in making payments on the advanced biofuel industry as a whole.

Comment: One commenter notes that the difficulty in the economic decision to produce advanced biofuels is with the uncertainty of payment level from a competitive funding pool. Without knowing what the payment will be, facilities may be hesitant in moving forward with advanced biofuel related production especially if the economics are questionable. The commenter believes more consistent advanced biofuel production could occur if a payment rate structure and formula could be established to lessen the uncertainty so that biorefineries with operational flexibility in creating advanced biofuels would be encouraged to do so based on good economics. The appropriateness of the payment rates can be periodically evaluated and adjusted based on economic conditions and program results for expanding biofuel production.

Response: While the Agency acknowledges the commenter's concern over the uncertainty of payment level and economic decisions, there are too many variables outside the control of the Agency to reduce this uncertainty. Such variables include the number of applicants, the types of advanced biofuels, and the quantity of advanced biofuels seeking payment in any funding pool. The Agency notes that, by specifying each fiscal year the level of funds that will be available for actual production payments and for incremental production payments, some additional information is provided to producers to assist in their planning.

Foreign Ownership

Comments in Support of Allowing Foreign Ownership

Comments: USDA received a large number of comments (over 1,000) related to the question of whether advanced biofuel biorefineries with foreign ownership should be allowed to participate in the program. Most of the commenters state their support for allowing foreign ownership (their opposition to the proposed 51 percent domestic ownership requirement). The commenters include U.S. Congressional Representatives, trade associations, industry representatives, and biorefinery employees. A large majority of the commenters supplied comments specifically related to one foreign-owned biorefinery, the Louis Dreyfus biorefinery in Claypool, Indiana. The key points offered by the commenters are summarized, as follows:

- Allow the Dreyfus facility to compete on a level playing field by revising the biofuel payment policy to allow the Claypool plant to be treated like the rest of the industry.
- The Dreyfus facility needs the payments to stay competitive with the other plants.
- Adverse local economic effects if plant is not included in payment program. This could lead to plant closure and a loss of jobs as well as income to local farmers and businesses.
- They are a positive influence on the local, regional, and National community.
- The plant meets the priorities associated with the payment program (incentivize increased U.S. production of biodiesel, creates jobs, boosts economic activity in rural areas).
- The biodiesel generated at this plant helps America break free of its dependence on foreign oil/provides a source of clean burning biofuel.
- Taking money away from Dreyfus would lower their bean price and raise our bottom line.
- Dreyfus has brought jobs to the U.S., while a lot of companies are taking jobs overseas (*e.g.,* to China).
- The facility has boosted the local economy; created local jobs during construction, material acquisitions, direct jobs, supports dozens of jobs in related businesses.
- Increases economic opportunity for farmers through the purchase of local soybeans, increasing the farmer's basis and decreasing transportation costs. The facility's location allows more efficient transport of soybeans grown.
- The Company has improved/invested in local infrastructure.
- Provides an excellent market for soybeans and a positive impact on soybean prices.
- Pays local, State, and Federal taxes; complies with U.S. laws and regulations.
- Eliminating the 51 percent domestic ownership provision would send a strong message to other countries that the U.S. is a great place to locate their business.
- Given the tough economic times, USDA should be encouraging as much investment in local communities as possible.
- Investments made in biofuels extend beyond the producer by also supporting rural economies. The new generation of advanced biofuels is a critical next step in bolstering this industry and capitalizing on the investments already made. The development of advanced biofuels in this country cannot be accomplished without the contribution of major investments, including foreign investments.
- The Dreyfus Company has made substantial investment in the U.S., locating its plant in the U.S., employing U.S. citizens, and using U.S. soybeans grown by American farmers to produce a renewable fuel. Dreyfus provides American jobs and pays American taxes the same as the other plants allowed to participate in the payment program and should not be left out.
- The statute, as now written, does not have qualifiers or eligibility for payments; merely, provided payments to all producers of advanced biofuel. The statute only defines an eligible producer as a "producer of advance biofuels" and contains no other conditions; it simply provides payments to all producers of advanced biofuel and defines advanced biofuel to include biodiesel.

Numerous commenters believe that the Agency does not understand the financial benefits the Louis Dreyfus facility has on rural Indiana. The commenters point out that this company employs U.S. citizens, buys U.S. grown soybeans, and invests in U.S. rural infrastructure. The commenters state that this is the definition of rural development. Therefore, the commenters support changing the 51 percent U.S. ownership provision to include any facility included in the U.S., including the Louis Dreyfus facility, producing an advanced biofuel. The commenters believe that making this change would send a strong message to other countries that the U.S. is a great place to locate their business. Finally, these commenters suggest that, given these adverse economic times, we should be encouraging as much investment in our rural communities as possible. The commenters point out that the Louis Dreyfus company has made that commitment to Indiana, its farmers, and its rural communities and we should applaud, not penalize them, for their investment.

Several commenters question whether the Agency is following the intent of the program by including the citizenship or eligibility requirements as part of the program. The commenters state that the Agency's decision to implement eligibility restrictions is a significant departure from Congressional intent and those restrictions should be eliminated from the program. The intent of the program (even as detailed by USDA in their NOCP for 2009) is to stimulate rural economies (provide jobs), and to promote the production of biofuels within the U.S. Neither of these goals is promoted by including a citizenship requirement in the rule.

Comments Opposed to Allowing Foreign Ownership

Comment: Six commenters do not support allowing advanced biofuel biorefineries with foreign ownership to participate in the program. These commenters generally expressed the concern that the money used to fund this program comes from American taxpayers and should not go to foreign companies.

One commenter believes that this program should promote American companies and states that foreign companies, even if they hire local people, have driven out other U.S. companies who also are hiring U.S. employees and keep profits at home in the U.S.

Another commenter understands a key to the Bioenergy Program for Advanced Biofuels is to promote a dynamic business environment in rural America. The commenter states that one way to continue that dynamic business environment is to promote U.S.-owned businesses. The commenter notes that the National Biodiesel Board (NBB) reports that more than 170 American companies have invested in production capacity that currently approaches 2.7 billion gallons nationwide. The commenter is owned directly and indirectly by nearly 5,000 Midwest investors who have helped build the U.S. biodiesel industry. An overwhelming majority of those investors are rural taxpayers who have invested in a U.S.-owned and operated company in order to promote our nation's energy goals and support U.S. agriculture. The U.S. biodiesel industry will spend about $1.3 billion on raw

materials, goods and services to produce 475 million gallons of biodiesel this year. In doing so the biodiesel industry will add $4.1 billion to GDP this year, increase household income by nearly $1 billion, and support nearly 23,000 jobs in all sectors of the economy. In addition, the biodiesel industry will provide $445 million of tax revenue to the Federal treasury and $383 million to State and local governments.

Another commenter expressed concern that illegal immigrants might be taking jobs away from Americans if foreign-owned companies are allowed to participate.

One commenter further suggests that the program be restricted to only those producers that are 100 percent (rather than 51 percent) domestically owned.

One commenter is opposed to providing of any further tax relief to Louis Dreyfus' bio-fuels activities. According to the commenter, (1) the owners of this facility have already had years of tax relief, which they knew would run out at a specific time; (2) that they are foreign owned and received these tax breaks shows how the U.S. has helped them, so now they should be able to stand on their own without further hurting the tax base; and (3) they have publicly stated that if they do not get the continuation of the tax relief it will not alter their plans and they will continue to operate as they are now, so there would be no negative impact on the community.

Response: The Agency has reconsidered the citizenship requirement and has decided to eliminate this requirement from the rule. The Agency agrees that the beneficial impacts of the program will be at the local level regardless of ownership.

Comment: One commenter recommends that the program include a requirement that eligible facilities be located in the United States, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, America Samoa and the Commonwealth of Puerto Rico. Focusing on the facility location rather than citizenship would alleviate the issue of disparate treatment based upon national origin. Furthermore, individual or entity eligibility requirements would reveal producers that were ineligible.

Response: As noted in the previous response, the citizenship requirement has been removed from the rule. Thus, this comment is moot.

Non-Rural Eligibility

Comments were received for allowing advanced biofuel biorefineries located in non-rural areas to participate in this program and for disallowing such biorefineries from participating.

Reasons cited by commenters for allowing non-rural advanced biofuel biorefineries to participate included:

1. A rural area requirement unfairly excludes valuable biodiesel production facilities that make quality fuel, utilize domestic feedstock, and benefit American farmers and their communities. Biodiesel made from restaurant waste oil is a good example of a renewable biofuel currently sourced and produced most efficiently in urban areas. To exclude these producers seems to us contrary to the goals of the program.

2. For a biorefinery, the cost of feedstock can typically represent 80 percent of the total cost of finished product. A sustainable, reliable supply of feedstock is the centerpiece of a successful renewable fuel plant. These plants, regardless of where they are located, offer long-term opportunities for the feedstock producers in the rural agricultural community. The opportunities include those associated with employment of a local/rural labor force, seed sales, farm equipment, fertilizer sales, feedstock storage and trans-load terminals, and transport. One of the commenter's observes that the rural economic development potential resulting from a new biofuel facility far exceeds the potential of the community where the facility is actually located. As an example, the commenter's facility will result in 55 manufacturing jobs and a local tax revenue of approximately $1.5 million.

An independent economic impact analysis found that for the rural communities where our barley will be grown, 450 farm jobs will be created and farmers will have access to a new winter barley market that will offer a $100 million revenue opportunity. The rule, as proposed, allowing eligibility to facilities in non-rural communities is critical to the success of the Program and clearly maintains the spirit of enhancing rural development.

3. The rural area requirement was not contemplated in the statute or intended by Congress.

4. The Bioenergy Program was established under the Energy Title (Title IX) of the Farm Bill. It is not a Rural Development (Title VI) program; thus, the rural area requirement should not apply.

5. Regardless of whether or not an advanced biofuel production facility is located in a rural area, that facility will still be employing U.S. citizens, paying U.S. taxes, and creating demand for U.S. agricultural products and services by operating on feedstock produced by U.S. farmers. Therefore, any "non-rural" facility's participation in the program will positively impact U.S agriculture and rural development nearly as much as the participation of a "rural facility." In order to promote equitable as well as expanded U.S. biodiesel production, participation in this program should not be based on geography.

6. Exclusion of some production facilities located in the U.S. would create inequity in the advanced biofuels market. Those entities excluded from the program would be placed at a competitive disadvantage to other producers that are eligible. In some cases, there would be facilities located in the same State or region that would be treated differently.

7. In the case of the Bioenergy Program, the rural development benefits accrue from the significant use of renewable domestic agricultural feedstock. This benefit exists regardless of the location of the biofuel production facility.

8. Farmers, in particular, have realized significant economic benefits as a result of the expanded markets and increased demand for agricultural feedstock and co-products resulting from biodiesel production.

9. The possibility that the rural area requirement would be imposed was not raised by USDA during the public hearing on the Bioenergy Program or at any time prior to the release of the NOCP.

10. The previous version of this program was administered by the Farm Service Agency (FSA) with no rural area requirement. The rural area requirement was not included in the preceding Bioenergy Program and was never discussed publicly by USDA prior to issuance of the NOCPs. The arbitrary limitation on program eligibility is inconsistent with the policy objectives Congress sought to address when it enacted Section 9005 of Public Law 110–234.

11. Biodiesel producers operate in a high volume, low margin competitive fuels marketplace. Slight variations in pricing will impact a producer's ability to sell fuel. Disqualifying similarly situated producers from participating in the program based solely on their geographic location will create artificial market distortions and put some producers at a distinct economic disadvantage. In the interest of equity and promoting the expanded production of advanced biofuels, all biodiesel producers who manufacture fuel meeting the ASTM D6751 fuel specification should be permitted to receive program payments, regardless of their plant's physical location. It is

worthwhile to note that farmers and feedstock providers in rural areas accrue the economic benefits of increased demand for biomass feedstock, regardless of whether a plant is located in a rural or urban area. This is a result consistent with overall mission of USDA's Rural Business-Cooperative Service.

12. Including a rule based simply on population fails to fully recognize the contribution the commenter's business makes to farm families and the rural communities surrounding our city. While Owensboro's population slightly exceeds 50,000 people, our town and our region are predominately rural rather than urban.

13. The "Rural Area" requirement should not be included in the final rule. Domestic feedstock derived from plant or vegetative matter that is converted into advanced biofuels directly supports the U.S. rural agricultural model. The requirement of the facility to be located in a rural area minimizes the national effort to produce biofuels that support geographic fuel needs. In all aspects, rural agriculture is strongly supported by the production and use of feedstock grown in the United States.

14. Excluding plants in rural areas is inconsistent with the overall goals of USDA biofuels programs, which is to increase domestic, renewable energy sources and expand markets for farmers.

15. A rural area requirement unfairly excludes valuable biodiesel production facilities that make quality fuel, utilize domestic feedstock, and benefit American farmers and their communities. Rural development benefits accrue from the significant use of renewable domestic agricultural feedstock. This benefit exists regardless of the location of the biofuel production facility.

16. As a general rule, a majority of the feedstock will inherently come from the rural community, and be produced/collected/harvested by a local labor force. Similarly construction and operation workforces will be predominantly local. The rural economic development potential resulting from a new biofuel facility is substantial. One advantage of advanced biofuels is that they can be produced all over the country utilizing multiple feedstock. Projects should not be evaluated negatively on one of advanced biofuels industries greatest assets, flexibility. The rule, as proposed, allowing eligibility to facilities in non-rural communities is critical to the success of the program and clearly maintains the spirit of enhancing rural development.

17. Offering eligibility to facilities in non-rural communities is critical to the success of the program goals and the advanced biofuels industry. Restricting the location of these facilities is not necessary to maintain the spirit of enhancing rural development and the geographic diversity of advanced biofuels production. More flexibility of site selection, not less, should be installed in these programs.

18. Having a consistent, cost competitive regional supply of feedstock is key to the success of any project. Non rural plants that use agricultural feedstock will most certainly rely on the surrounding rural communities to produce, harvest, store, and handle feedstock needs. With feedstock cost representing the largest operational cost of a biorefinery, this in turn means that most of what the plant spends goes to the rural community in paying for that feedstock. This should demonstrate that the biorefinery does not need to be in a rural area to fulfill program goals. Excluding plants that are not in rural areas denies the supporting rural community significant opportunity.

19. Geographic requirements will not serve the goal of promoting a stable advanced biofuel industry in the U.S. Siting of biofuel facilities will be dependent on available feedstock, infrastructure, logistics, and other factors. Undoubtedly, many advanced biofuel facilities will be located in rural areas due to feedstock availability. However, to the extent that qualifying renewable biomass is located in other areas, the Agency should not discourage utilization of these resources and the development of the advanced biofuels industry by excluding non-rural facilities from eligibility for the payments program.

20. Advanced biofuel produced in the U.S. and its territories does not depend on the location of the production plant.

One commenter commends the proposed removal of a rural location requirement for advanced biofuel producers under this program. It is appropriate for USDA Rural Development to wish to see such facilities located in rural areas, but the very existence of this emerging sector will benefit rural areas generally, which are the source of most of the feedstock used for biofuels. In Oregon, one of the primary producers of biodiesel is located in Salem, Oregon, an urban area. Yet it provides an invaluable processing facility for vegetable oilseed raised in rural areas of the State. The past practice of disqualifying urban sites excluded Oregon's lead producer of advanced biofuels from the benefits of the program, and thus limited Oregon's ability to expand its biofuel industry. In an emerging industry that is still attempting to establish itself, such disqualification is not helpful. The new approach found in the proposed rule should be retained in the final rule.

One commenter suggested that the Agency change the 50,000 population criterion to 500,000 to 1 million persons. Such a change would enable the commenter's facility, which is located next to two interconnected railroads, to easily bring in feedstock and ship out finished biodiesel, allowing the facility to build on the relationships with local/domestic farm institutions.

One commenter, a biofuel producer, notes that they are invested heavily in the future of agriculture in our region. There are more than 4,000 farm families who grow soybeans in our market area. Our presence in the market adds competition for the available soybeans and benefits all soybean farmers. Losing the eligibility of the Advanced Biofuel Payment Program takes away a portion of our ability to fairly compete in the marketplace and ultimately hurts soybean prices paid to farmers. This is especially true given the current economic conditions facing biodiesel.

Our eligibility in this program would allow us to maintain some level of production. The stated purpose of the Advanced Biofuels Program is to ensure expanded production of biofuels and promote sustainable economic development in rural America. Excluding our facility in this program creates a competitive disadvantage and inequity in the marketplace.

In fact, a competing biodiesel facility could locate less than five miles from our existing location and would be eligible for Rural Development programs that would assist in construction grants and loans. They would be eligible for:

- Biorefinery Assistance Loan Guarantees (section 9003).
- Rural Business Enterprise Grants (RBEG) Program.
- Rural Energy for America Program Grants (REAP Grants).
- REAP Energy Audit.
- REAP Renewable Energy Development Assist.

Based on the underlying law and the stated purpose of the program "to support and ensure an expanding production of Advanced Biofuels," the commenter believes it should be eligible for payments in this program and all other Rural Development programs.

The commenter also points out that the city of Owensboro and the surrounding rural areas are economically linked and interdependent. The commenter's

business is dependent on the farmers in our neighboring rural areas to supply our basic raw material. Furthermore, the commenter has made a significant investment in resources to produce biofuels and for more than 100 years have been a partner in building a more prosperous agricultural economy in our region. The commenter believes it is an example of the type of business the legislation intended to benefit and that if eligible, then thousands of soybean producers will also benefit.

One commenter uses used cooking oil (UCO) as a feedstock to produce UCO-based biodiesel, which advances the goals of this program. The commenter refers to studies in the State of California and the European Union that have demonstrated that UCO-based biodiesel has one of the lowest life cycle carbon footprints of any road ready fuel available on the worldwide market (*http://www.arb.ca.gov/fuels/lcfs/workgroups/workgroups.htm#pathways*). Using UCO as a feedstock poses significant challenges that require technologies not needed by producers that use virgin oils such as canola and soybean oil. The additional cost of obtaining this equipment to process this feedstock could be offset through funding from this program.

However, producing UCO-based biodiesel depends on being close to cities and population centers where large quantities of UCO are produced daily and where larger populations generate higher amounts of carbon and pollution. This fuel is not viably produced in a rural area where any significant quantity of UCO would, by necessity, require shipment from cities and large population centers. This shipment would raise both the cost of acquisition of feedstock and the life cycle carbon footprint of the fuel through its transportation. This cost would mitigate any benefit received through the program and the proceeds would be consumed through increased cost as opposed to being used for infrastructure upgrades.

As a result, if a rule is implemented with a rural production requirement, the commenter and other producers working on a similar business model will be unqualified to participate and the significance investments made to produce UCO-based fuel will go unsupported. Therefore, the commenter recommends that any requirement that biofuel production be in a rural area be removed from any final rule.

One commenter notes the importance of the applicability of the Bioenergy Program to all U.S.-based biodiesel facilities, especially those majority-owned by U.S. farmers. The rural area requirement, as applied last year, eliminated much U.S.-based biodiesel production. It is particularly concerning that the program eliminated U.S.-based biodiesel facilities owned by U.S. farmers. The prior application of the rural area requirement unfairly excluded valuable biodiesel production facilities that make quality fuel, utilize domestic feedstock, and benefit American farmers and their communities. Rural development benefits accrue from the significant use of renewable domestic agricultural feedstock. This benefit exists regardless of the location of the biofuel production facility.

One commenter states that, if the final rule continues the rural area requirement, it would not be consistent with the intent of the program to "provide assistance to entities that create jobs and increase investment through the production of advanced bioenergy."

Reasons for disallowing non-rural advance biofuel facilities from participating included:

1. This is a rural development program and it should be used in rural areas. Requiring a rural location for biorefineries is inherently consistent with the mission of USDA's Rural Business-Cooperative Service and as such USDA should include the previous NOCP's rural location as a requirement for this program.

2. In previous notices of contract proposal (Fiscal Year 2009 and Fiscal Year 2010), this program was restricted to facilities located in rural areas. In addition, the stated mission of Rural Development is to help improve the economy and quality of life in rural America. The Agency should continue to support economic development, biorefinery construction, and advanced biofuels production in rural areas through the Advanced Biofuel Payment Program. This will ensure that future NOCPs are consistent with the NOCPs already issued and achieve the mission of USDA.

3. While not specifically stated in the 2008 Farm Bill language, the program was created by the Farm Bill and should serve rural economies where farms are located. USDA has concentrated heavily on rural economic development over the last two years and has mentioned it as a cornerstone of the upcoming 2012 Farm Bill. This program can continue current economic activity and stimulate new activity by promoting the production of advanced biofuels in rural areas.

4. Most producers located in rural areas operate at smaller capacities as compared to those in urban areas and, therefore, do not benefit from certain "economies-of-scale" that larger producers may be able to benefit from. This further reduces already thin margins that many rural producers are operating under, and the relief in feedstock pricing that would be provided under this rural program is critical to the rural producer's ability to be competitive in the biodiesel marketplace.

5. The intent of the originating statute was to incent rural community economies and as such requests USDA to reinstate a rural location requirement as contained in previous NOCPs. Many non-rural located biodiesel refineries have the innate ability to import foreign feedstock for refining into biodiesel.

6. The intent of Congress was to not only incent rural located biorefineries, but to enhance the economics thru increased demand for U.S.-based biomass feedstock produced in the rural areas of the U.S.

Response: The Agency has reconsidered the proposed rural area requirement and agrees with the commenters that the beneficial impacts of the program will generally be in rural areas even if the biofuel facility is located in an area that does not meet the proposed rural area definition. Biomass production is expected to occur largely in rural areas and, thus, rural economies will benefit from the increased use of biomass. The Agency is, therefore, removing the proposed rural area requirement from the rule.

Immediate Family Citizenship

Comment: Several commenters disagree with the provision of the rule that would allow ownership by an entity composed of immediate family members where only one member of the family is a U.S. citizen. One commenter maintains this should not be allowed because the money used to fund this program is "U.S. money." Commenters point out that, if the citizenship requirement is removed, then this requirement becomes moot.

Another commenter states that the Agency provided no rationale for why the citizenship requirement should be ignored if only one member of an immediate family owned even a fractional interest in a company otherwise owned by foreign investors.

Response: As noted in a response earlier in this preamble, the Agency is removing the citizenship requirement from the rule. Thus, as pointed out by the commenters, the immediate family citizenship requirement is also removed and these comments are moot.

Different Payment Rates Associated With Greenhouse Gases (GHG)

Comments were received both for and against instituting different payment rates based on GHG emission reductions, including some comments suggesting that the Agency delay implementing a differentiation payment rate based on GHG emission reductions.

Comments in Favor

Comment: Four commenters support the concept of basing payments on GHG emissions. Three of the commenters believe that the Agency should implement such provisions now, while the fourth commenter suggests a more cautious approach.

One commenter supports payments based on GHG emissions because it would be consistent with Executive Order 12514 and RFS, and, by paying more for fuels that have a greater impact on GHG emissions reduction, the program will encourage the production of these fuels. The commenter recommends adding to the existing calculation a multiplier similar to Renewable Identification Numbers (RINs), but with broader applicability such as The General Reporting Protocol of The Climate Registry.

One commenter recommends that, in order to simplify the process, advanced biofuels producers have their fuels certified by the EPA for the purposes of the RFS to determine GHG reduction. The commenter proposes that advanced biofuels that achieve a minimum 60 percent reduction receive an incremental 5x payment rate compared to advanced biofuels that meet the 50 percent reduction threshold necessary to qualify as an advanced biofuel for the RFS. The RFS 2022 goal for cellulosic biofuel, which must attain a 60 percent GHG reduction, is 16 billion gallons. Cellulosic biofuel will make up the majority of the total RFS goal of 36 billion gallons by 2022 and yet currently there is no commercial production of this alternative transportation fuel. Therefore, USDA, in cooperation with the Department of Energy and EPA, should use the Advanced Biofuel Payment Program to spur the near-term production of cellulosic biofuels by distributing larger incentive payments than other advanced biofuels.

One commenter recommends that the calculation be higher by the percent of difference. The commenter illustrates this as follows: If one advanced biofuel is 20 percent and another advanced biofuel is 50 percent, there should be a 30 percent pay difference.

One commenter agrees that incentivizing GHG performance is clearly important, but believes that establishing a healthy industry first is more important, noting that the advanced biofuel industry has to get good before it gets great and the push toward increasingly lower GHG numbers should not be done at the sake of discouraging commercial scale capacities of other, more competitive renewable fuels, and it should not be done at the sake of overlooking valuable feedstock options. If the Agency chooses this path, the commenter recommends that the Agency should also look to provide higher payments based on a reduced level of difficulty to grow, harvest, and transport feedstock to the facility because a reliable, competitively cost feedstock is critical to a successful, long term business plan. The commenter states that incentivizing a high GHG performing fuel that fails to offer a long-term, sustainable feedstock option is counterproductive and that fuels derived from recurring, sustainable crops that can be integrated into the agriculture sector offers greater benefit to an industry trying to establish itself. Based on this, the commenter offers the following suggestion:

Establish a schedule of payment multipliers based on impact of fulfilling program goals. As an example, annually recurring crops grown incremental to current crops on existing acres and perennial crops that can be grown on marginal acres should receive a multiplier. Fuels assigned an advanced ''D code'' by EPA's Renewable Fuel Standard should also be considered for a multiplier.

Lastly, the commenter assumes that solid fuels would be exempt (and, therefore, not disadvantage liquid fuels) because there is no established GHG benchmark for solid fuels.

One commenter supports the proposed approach to offer different payment rates based on the advanced biofuels' lifecycle GHG emissions. A workable approach would be use the EPA's categorization and registration of renewable fuels, *i.e.* advanced biofuels and cellulosic biofuels, with threshold GHG emission reductions of 50 percent and 60 percent, respectively, as the basis for this differential payment scheme. Under this approach, advanced biofuels designated as cellulosic biofuels by the EPA and registered as cellulosic biofuels with the EPA would receive a greater payment than those designated and registered as advanced biofuels.

One commenter supports a payment structure that is based on GHG emissions relative to petroleum as determined by EPA for the RFS. The commenter believes that this is a preferable approach for biodiesel producers compared to a structure in which differential payments are made on base versus incremental production. According to the commenter, the GHG-based structure would avoid penalizing biodiesel plants that have kept producing during difficult economic times. The commenter recommends that a GHG-based program provide the same higher payment levels to all of the biofuels determined by EPA to exceed 50 percent GHG emissions reductions, with no differentiation between base and incremental production.

One commenter believes that the USDA Bioenergy Program regulations should be kept simple to encourage streamlined administration of the program. While we do not believe that the indirect land use change calculations included in the RFS regulation are mature or have been adequately vetted in the scientific community, if USDA does include lifecycle GHG emission reduction benchmarks as a way to reward lower emitting fuels with a higher payment rate, the commenter recommends:

(1) Relying on already established regulations instead of creating a new set of regulations for those calculations (*i.e.,* EPA RFS), and

(2) Not complicating the program with multiple payment levels USDA will need to create and monitor, simply create a higher payment rate for advanced biofuels, as defined in the Farm Bill, that meet the RFS lifecycle GHG emission reduction requirements.

The commenter also urges the Agency to make sure the program is flexible so that a producer can reapply in order to meet the higher payment criteria for the same project as it evolves. It should also be assumed that producers of advanced liquid biofuels would not produce fuels that do not meet the RFS qualifications; therefore, including lifecycle GHG emission reduction requirements in this program for liquid transportation fuels would be redundant and the commenter cautions against adding any unnecessary regulations to this program that could slow or complicate the process and therefore retard commercialization and production.

Once again, liquid biofuels are the only advanced biofuels that currently have a regulatory framework in place for measuring GHG emission reductions compared to their counterparts. Because the definition of advanced biofuels in this proposed rule applies to solid, liquid, or gaseous fuels, the Agency would need to determine how it will quantify gaseous and solid advanced biofuels emission reductions when compared to their counterparts. For

reference, the commenter submitted its opinions of land use change in the regulation in its comments to the proposed rule by EPA on the administration of the RFS. A relevant excerpt is below:

''RFS driven biofuels demand on global agricultural land are miniscule compared to other land use factors. This does not mean that we can ignore the indirect land use effects of biofuels, since the goal ultimately for biofuels would be to play an even larger role in the energy supply. It does suggest, however, that current policies can be designed in such a way that they encourage investment in biofuels without immediate risk of severe land impacts. In the mean time, further analysis can be done to determine how and if policies for large scale deployment can be implemented to safeguard land resources and prevent unintended carbon emissions.

Regulating land use related emissions of carbon through biofuels may result in the premature stifling of a potentially important sustainable energy resource for transportation, while doing nothing to address the serious problems of unsustainable global land management that continue to destroy valuable natural land resources and to contribute a tremendous amount of carbon to the atmosphere.

Unsustainable farm practices worldwide may be responsible for as much as 5 million hectares per year of lost agricultural land due to degradation and loss of performance. To put that number in context, this annual loss of land is equivalent to losing 1 to 2 billion gallons of annual ethanol production each year.

Given these considerations, the commenter urges EPA to fully acknowledge the extent of the uncertainty in estimation of emissions from land use change, and ensure that emerging biofuels technologies are not disqualified from participation in the RFS–2 program unless clearly demonstrated to be out of compliance with the program's GHG performance requirements under the full range of reasonable assumptions for the pertinent methodology, including assumptions that have not been adopted in EPA's proposed methodology.

Specifically, should a biofuel satisfy its GHG performance requirement under any reasonable set of assumptions under EPA's uncertainty analysis, it should be deemed to qualify.''

One commenter supports the proposal to link payments to the achievement of GHG reductions. However, the commenter encourages the Agency to maximize GHG reductions from biofuels by basing payments on the full lifecycle reductions actually achieved, not merely on achieving minimum thresholds. The existing RFS–2 program only requires that biofuels meet specific thresholds (such as a 60 percent reduction for cellulosic biofuels), but the program offers no incentives for producers to exceed those thresholds. Conversely, low-carbon fuel standards being developed by California and the northeastern States encourage maximum reductions by fully crediting the reductions achieved. The latter approach will best help the Agency achieve incremental GHG reductions and support the Administration's goal of reducing GHGs.

One commenter states that, in the case of a biofuel (*e.g.,* canola biodiesel) whose lifecycle analysis is still pending at EPA, the Agency should ensure that if it is subsequently determined to be eligible, then all such biofuel produced during that fiscal year would be eligible for Bioenergy Program payment, even if the production occurred before the EPA lifecycle analysis was concluded.

Another commenter provides similar, but more extensive comments. This commenter notes that EPA is currently conducting a lifecycle analysis on canola biodiesel to determine if it meets the 50 percent GHG emissions reduction threshold required for eligibility for the biomass-based diesel pool. The commenter and canola biodiesel stakeholders that are working with EPA on this process are confident that canola biodiesel will exceed the 50 percent threshold. EPA has determined that biodiesel produced from soybean oil, a vegetable oil similar to canola oil, exceeds the 50 percent threshold. The commenter believes that the lifecycle factors associated with canola will enable it to meet and exceed the required GHG emissions reductions. EPA has indicated its intention to have the canola lifecycle concluded in the next several months.

The fact that the canola lifecycle analysis has not been completed creates uncertainty for canola biodiesel producers and makes it difficult for the commenter to advocate using the EPA GHG emissions as a basis for the Bioenergy Program payments. A GHG emissions based payment structure could be preferable to the existing structure that provides a differential payment for incremental production. The GHG-based structure would avoid penalizing biodiesel plants that have kept producing during difficult economic times.

If the Agency utilizes a Bioenergy Program payment structure that is based on GHG emissions as determined by EPA for the RFS, then the Agency should ensure that if canola biodiesel is subsequently determined by EPA to exceed the 50 percent threshold, then all such biofuel produced during that fiscal year would be eligible for the higher Bioenergy Program payment, even if the production occurred before the EPA lifecycle analysis was concluded. A GHG-based program should provide the same higher payment levels to all of the biofuels determined by EPA to exceed 50 percent GHG emissions reductions. The payment should not differentiate between base and incremental production.

Two commenters note that, if the Agency utilizes a program structure that provides a higher payment level based on GHG emission reductions, then the application process should not require significant revision. During step one, applicants can provide proof of their registration with EPA for participation in the RFS. During step three, producers can provide the actual amounts produced to qualify for the higher payment level and, according to one commenter, the RIN or appropriate proof of RFS eligibility to qualify for the higher payment level.

One commenter supports a Bioenergy Program payment structure that is based on the GHG emissions relative to petroleum as determined by EPA for the RFS. This would be a preferable approach for biodiesel producers compared to a structure in which differential payments is made on base versus incremental production. The GHG-based structure would avoid penalizing biodiesel plants that have kept producing during difficult economic times. A GHG-based program should provide higher payment levels to those biofuels determined by EPA to exceed 50 percent GHG emissions reductions. The payment should not differentiate between base and incremental production.

One commenter states that this program is intended to lower greenhouse gas emissions and reduce and replace the nation's current dependency on petroleum while creating green jobs. Biodiesel is one of the only EPA approved road ready biofuels that is capable of direct replacement of petroleum diesel without modifications in the vast majority of transportation applications. The proposed rule specifically states that, while accepting that not all biofuel produced under the program will be used in transportation, "the Agency expects the majority of advanced biofuels participating in the program will be used as transportation fuels to meet the mandates of the Renewable Fuel Standard."

Comments Against

Comment: Two commenters state that all advanced biofuels should receive the same base and incremental payment regardless of classification by EPA under the RFS–2. According to the commenters, EPA is using unproven

combinations of models to calculate the GHG reduction for biofuels. Further, EPA's delay in qualifying existing and new feedstock and process pathways could lead to a situation where a biofuel could receive a lower payment under the proposed GHG tiers where it may be qualified by EPA at a much later date to the amount of its GHG reduction. Would this biorefinery be eligible for a "post" payment to get the amount it would have been eligible for under a tiered system with its new designation?

There could be instances where a feedstock could be under review until 2012 by EPA—the expiration of the current USDA program. Dependence by USDA on the RFS–2 definitions and delineations is premature. Once the science behind GHG emissions is more fully understood and defined, then the Agency may want to look at including some tiered system. The commenter suggests that this could be a much more appropriate discussion as the 2012 Farm Bill takes shape. Currently, EPA has certified very few gallons of advanced biofuels production. Development of payment tiers would result in very large payments going to very few biorefineries. Payment tiers would also be very difficult to establish for non-liquid biofuels since EPA is only certifying transportation fuels in regards to GHG reduction. Would non-liquid biofuels, which are currently eligible for payments at the same rate as liquid fuels, be at a different rate under the tiered system? Would non-liquid biofuels be responsible for supplying a complete lifecycle analysis to determine their GHG reduction?

Finally, the House of Representatives, in an amendment to the Waxman-Markey Climate Change Bill (H.R. 2454), put a moratorium on the inclusion of indirect land use calculations in determining the GHG reduction benefit of biofuels. If H.R. 2454 became law, how would USDA implement the proposed tiers? Would USDA use EPA's determined GHG reductions, and then add back the calculated indirect land use? The intent of the program is to promote the production and expansion of advanced biofuels. A tiered system of payments based on GHG reductions would not further the intent of the program, and would only complicate administration of the program and its understanding and use by biorefineries that can produce advanced biofuels. Complicating the program will lead to uncertainty among advanced biofuels producers. Uncertainty will not lead to expanded production of advanced biofuels in rural America.

One commenter states that all advanced biofuels under this program should be treated similarly. Differentiated payments to certain advanced biofuels and not others will create artificial market distortions. These distortions are created because the USDA is picking winners and losers in the advanced biofuels arena based on arbitrary requirements. The market will then reward those who luckily meet the requirements or can adjust their production to meet the requirements. Some will be disadvantaged because the rules are changing after the plant has been built or commenced construction and cannot be changed (*e.g.,* location). Advanced biofuel produced in the U.S. and its territories is considered biofuel by the marketplace. Therefore, it does not depend on the GHG emissions of the biofuel. Separate regulations (*e.g.,* RFS–2, CA LCFS, *etc.*) control the marketplace differentiation of biofuels based on their GHG emissions. A support differentiation based on the amount of GHG emissions of a particular biofuel should not be implemented.

Delay

Comment: One commenter suggests the decision to offer different payment rates based on advanced biofuels' lifecycle GHG emissions be delayed until the models utilized for the calculations are proven and validated. Currently, there is significant concern about the assumptions made in such models. Once the science is better understood and accepted, then using this payment approach is premature. In addition, there is concern on how gaseous or non-liquid advanced biofuels would fit into the payment scheme and how GHG reduction for these biofuels would be considered.

Another commenter states that, for Fiscal Year 2012, the comment would support providing a higher payment rate for transportation fuels that significantly reduce GHG emissions and meet an applicable ASTM fuel specification. RFS–2 provides a specific use requirement for advanced biofuels. Specifically, the RFS–2 advanced biofuels schedule requires the use of specific volumes of biomass-based diesel, cellulosic biofuels, and advanced biofuels. Biomass-based diesel and advanced biofuels must reduce GHG emissions by 50 percent compared to the conventional fuel it is replacing. Cellulosic biofuels must reduce GHG emissions by 60 percent. Under this approach, fuel that qualifies as an advanced biofuel under the RFS–2 program and that meets an applicable ASTM specification would qualify for a higher single payment rate. The per gallon payment would be based on the BTU content of the fuel, as is the case in the previous NOCPs and the proposed rule.

Another commenter supports USDA's proposal in this rulemaking to provide funding on a more frequent basis providing biodiesel producers a more useful income stream. However, the commenter believes that, at this time, it is most important to quickly deliver Fiscal Year 2010 payments than to ruminate the concept of basing payments relative to lifecycle GHG emission reductions. The commenter, therefore, requests that the Agency revisit the issue of basing payments on greenhouse gas emissions in a separate rulemaking, which will allow more time for industry consideration and comments.

Response: In consideration of the comments received, the Agency has determined that it is not appropriate, at this time, to include a payment scheme based on GHG emission reduction, primarily because such calculations are not available for all types of advanced biofuels eligible for payments under this program. The Agency may reconsider this as the industry matures and as calculations become available for all types of advanced biofuels.

However, as noted in several previous responses, the Agency has revised the rule to award "bonus" BTUs to an advanced biofuel meets an applicable renewable fuel standard as identified by the EPA. This provision should result in a more favorable environmental result based on GHG emission reductions.

Comment: One commenter notes that Section 9005 of the Farm Bill grants the Secretary broad discretion to base payments on "appropriate factors." The commenter believes that it would be appropriate to structure the payments program to promote the best-performing biofuels to the maximum extent possible. The commenter strongly supports the proposal to base payments on the energy content of the fuel as well as the alternate proposal that would also consider lifecycle GHG emissions. In addition, the commenter encourages the Agency to link payments to the entire performance profile of an advanced biofuel, including energy content, lifecycle GHG performance, conventional pollutant emissions, compatibility with existing infrastructure and engines/equipment, impacts on water quality and quantity, and other factors. Some of these factors, including impacts on resource conservation, public health, and the environment, are already included as scoring criteria in the biorefinery loan guarantee program. The commenter recommends that the Agency use these

same metrics, as well as additional ones, in this program.

Response: While the Agency acknowledges the commenter's suggestion for incorporating additional metrics for environmental quality, there are too many variables outside the control of the Agency to establish quantitative values applicable to such environmental quality metrics to establish payments. Furthermore, calculating payments based on environmental quality metrics would add complexity to both the establishment of the payment rate and the administration of the program.

Subpart B—Advanced Biofuel Payments

Definitions—§ 4288.102

Advanced Biofuel

Comment: One commenter recommends that the definition of "advanced biofuel" include the requirement that the fuel is produced in the United States of America and its territories. According to the commenter, the definition of "Advance Biofuel" does not embrace the contents of other definitions such as biodiesel and ethanol. As such, a domestic producer could import commodities that meet the current definition and would potentially undermine the intent of the law. Therefore, the commenter supports the phrase either similar or exactly as used in § 4288.102 of the proposed rule "* * * manufactured in the United States and its territories."

Response: The Agency agrees with the comment. The biofuel eligibility criteria (§ 4288.111) requires the biofuel to be produced in a State. The Agency is satisfied that this addresses the commenter's concerns.

Comment: One commenter is opposed to the use of any definition of a biofuel, qualification of a biofuel, or payment for a biofuel that is not based on the 2008 Farm Bill definition of an "advanced biofuel." The commenter points out that all types of sorghum—grain, sweet, and high-biomass energy—can play an important part in the production of advanced biofuels. However, the commenter is concerned that two of the largest processors of grain sorghum into advanced biofuels do not qualify for the program. According to the commenter, this has resulted in plants being shuttered and rural economies being stymied as jobs have been lost in rural America, and the commenter encourages USDA to fix this disparity.

Two commenters note that they worked with the Senate Energy and Natural Resources Committee during the creation of the Energy Independence and Security Act of 2007 to develop an advanced biofuels definition and with the Agriculture Committees during the debate on the Food, Conservation and Energy Act of 2008 to clearly define all types of sorghum as advanced biofuels feedstock. Making this program work for the commenter's industry is a high priority.

Two commenters note that, currently, over 25 percent of the U.S. grain sorghum crop is processed through an ethanol facility. Ethanol biorefineries account for 43 percent of domestic grain sorghum usage. It is the most important value-added industry in the sorghum belt. This type of usage has resulted in increased rural economic growth and job creation. A sound advanced biofuels program can continue this impressive track record of rural economic activity. Sweet and energy sorghum biorefineries are also being planned. These new facilities will provide rural economic activity and can be supported by an advanced biofuels program.

Response: Grain sorghum is an eligible feedstock under the Section 9005 program.

Comment: One commenter states that the definition of advanced biofuels in the Food, Conservation, and Energy Act of 2008 leaves some ambiguity in regards to the inclusion of biofuels derived from sugar and starch. The commenter points out that the proposed rule states that "to be eligible for payments, advanced biofuels must be produced from renewable biomass, excluding corn kernel starch, in a biorefinery located in the United States." The inclusions section of the advanced biofuel definition in the legislation specifically includes "(ii) biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch) and (vi) butanol or other alcohols produced through the conversion of organic matter from renewable biomass." The commenter, therefore, requests that the Agency clarify in the final rule that the only fuel produced from corn kernel starch excluded from this program is ethanol, per the legislation and that advanced biofuels other than ethanol, for example fuels with a different molecular structure such as biobutanol, produced from a corn starch feedstock, qualify for this program under the definition of advanced biofuel in the Food, Conservation, and Energy Act of 2008.

Response: The Agency disagrees with the commenter and any advanced biofuel produced from corn kernel starch is excluded. The statute defines advanced biofuels as "* * * fuels derived from renewable biomass other than corn kernel starch."

Comment: One commenter recommends changing the current wording on exclusions to: "The only feedstock specifically excluded from the statutory definition of advanced biofuels is corn kernel starch and other biomass materials used in food production or consumption," because the intent of the proposed rule, according to the commenter, is to eliminate the use of food products to make fuel.

Response: The Agency does not agree with commenter's recommendation. The Agency is satisfied that the rule language is consistent with the statutory language (*e.g.,* the definition of advanced biofuel is directly from the statute). Therefore, the Agency has not revised the rule as requested by the commenter.

Comment: One commenter is concerned about the use of food crops (*i.e.,* corn) for the production of energy and such crops need to remain as food crops. According to the commenter, it takes more energy to turn corn into energy than you get out of the conversion process and that this is not reasonable. The commenter also believes that programs for converting corn to energy profits only big agri-businesses and not the small, individual farmer and therefore such programs should not be presented as helping the farmer. The commenter believes such programs need to be discontinued.

Response: This program does not allow for corn kernel starch biofuel producers. The focus of this program is "advanced biofuel," which are produced from non-corn kernel starch so the feedstocks are typically not in competition with food products.

Comment: One commenter is concerned with a reference in the preamble that indicates that the Agency has misconstrued congressional intent with regard to the definition of "advanced biofuel." The Agency states in the preamble that "The agency understands the definition to apply to solid, liquid, or gaseous fuels that are final products * * *" (*See* proposed rule, April 16, 2010, 75 FR 20093.) The Agency made a similar statement regarding solid advanced biofuels in its BCAP proposal, where it stated that a biomass conversion facility includes a facility that proposes to convert renewable biomass into heat, power, biobased products, advanced biodiesel or advanced biofuels such as wood pellets, grass pellets, wood chips, or briquettes. (*See* proposed rule, February 8, 2010 75 FR 6267.) As explained below, the commenter does not believe that any solid fuel qualifies as an advanced biofuel under the 2008 Farm Bill.

The definition of advanced biofuel in the Farm Bill closely tracks the definition included in the 2007 Energy Independence and Security Act (“EISA”), which mandated the production of 36 billion gallons of renewable transportation fuels by 2022. When Congress enacted the Farm Bill the next year, it is clear that it used the same definitional framework that it used in EISA. Like the definition in EISA, the Farm Bill Section 9001 definition of advanced biofuel includes seven qualifying types of fuel. These fuels are listed in the exact same order, except that the Farm Bill definition replaces references to “ethanol” with references to “biofuel.” Congress also replaced the reference to “biomass-based diesel” in EISA to “diesel equivalent fuel.” These changes did not evidence an intent to broaden the definition to include solid fuels, but rather indicated Congress’ growing understanding that there were numerous kinds of advanced biofuels other than ethanol, including cellulosic diesel (*e.g.* BTL). Thus, it is clear that the Farm Bill definition builds upon and improves upon the EISA definition, but that in both cases Congress intended to include only liquid fuels and biogas.

According to the commenter, there is no indication that Congress ever intended to include products such as wood pellets, grass pellets, wood chips, or briquettes within the definition in either EISA or the Farm Bill. Rather, under the Farm Bill, these types of products are either a “biobased product” or simply renewable biomass. The mere act of chipping, pelletizing, or compressing renewable biomass does not convert it into an advanced biofuel. Therefore, the commenter encourages the Agency to clarify that advanced biofuels are liquid fuels (and biogas) as defined in the Farm Bill.

Response: The Agency disagrees with this comment. Advanced biofuel, as defined in the authorizing statute, is fuel derived from renewable biomass other than corn kernel starch including materials, pre-commercial thinning, or invasive species from National Forest System land or public land that meet certain conditions.

Larger Producer

Comment: One commenter supports the proposed rule’s method for determining large producers whereby the Agency will determine the refining capacity of an advanced biofuel producer based on the production at all of the advanced biofuel refineries in which the producer has 50 percent or more ownership.

Response: The Agency agrees with the comment.

Comment: One commenter is opposed to the statutory requirement that caps payments to companies with total yearly capacity exceeding 150 million gallons at 5 percent of the program’s funds for each fiscal year. While the commenter understands this language was included in the legislation as a way to limit the ability of large renewable diesel co-processors to claim program funds, the commenter believes that a more effective way to limit participation by co-processors could be modeled after the current IRS interpretation that forbids “any fuel made out of co-processing biomass with feedstock that is not biomass” from receiving the Federal biodiesel blenders tax credit. The commenter contends that biodiesel gallons should not be disadvantaged under this program because of the size of the company from which they are produced. Every gallon of biodiesel production should be rewarded equivalently under this program.

Response: The statute provides that, for each fiscal year, not more than 5 percent of the funds are made available to eligible producers for production at facilities with a total advanced biofuel refining capacity exceeding 150,000,000 gallons per year (or 15,900,000 MMBTU of biogas or solid advanced biofuel). It is the Agency’s position that the requirement meets the intent of the originating language. The Agency does not have the authority to overwrite the original legislation.

Comment: Two commenters point out that the legislation for this program requires that not more than 5 percent of the funds be made available to eligible producers for production at facilities with capacity exceeding 150 million gallons per year. Both commenters believe this legislative provision requires the Agency to specify that this capacity calculation does not include a producer’s non-advanced biofuel capacity, should it have facilities in the U.S. producing additional gallons that do not qualify for this program. Thus, the commenter recommends that the 150 million gallon limit should only include a producer’s advanced biofuel capacity. Therefore, the commenter requests that the Agency specify in the final rule that the capacity calculation does not include a producer’s non-advanced biofuel capacity, should it have facilities in the U.S. producing additional gallons that do not qualify for this program.

Another commenter supports the proposed rule’s method for determining large producers, whereby the Agency will determine the refining capacity of an advanced biofuel producer based on the production at all of the advanced biofuel refineries in which the producer has 50 percent or more ownership.

Another commenter recommends eliminating the 150 million gallon per year production per owner cap. The commenter states that the incentives in this program will assist the current infrastructure’s transformation to the next generation of feedstock and next generation of biorefinery technology that will exceed reduced green house gas emissions levels. Transforming the biodiesel companies of today to the next generation of biorefinery production of tomorrow, this program will keep the pace moving forward. Removing the 150 million gallon cap will help accelerate this progress. Further, as the industry continues to consolidate to meet the needs of RFS2 obligated parties, removing the maximum production capacity per company will aid in more efficiently offering large volumes of biodiesel to these petroleum companies.

Response: With regard to eliminating the 150 million gallon cap, it is the Agency’s position that the rule requirement meets the intent of the originating language. The Agency does not have the authority to overwrite the original legislation. In addition, the Agency agrees with the commenter that only the producer’s advanced biofuel production counts towards the 150 million gallon cap (or the Agency defined equivalent of 15,900,000 MMBTU if the advanced biofuel is a biogas or solid) and the rule makes this clear.

Comment: Two commenters state that a per gallon limit for small and large producers is only applicable to liquid advanced biofuels producers. Because the definition of advanced biofuels in this proposed rule applies to solid, liquid, or gaseous fuels, the commenters state that the Agency needs to determine how it will define small and large producers of gaseous and solid advanced biofuels, should they qualify for this program.

Response: The Agency agrees with the commenter and has made provisions in the rule as to how biogas and solids producers are considered large or small. The Agency has added clarifying language in the definition of the term “larger producer” to account for producers of biogas and solid advanced biofuels. The definition in the interim rule now reads: “An eligible advanced biofuel producer with a refining capacity as determined for the prior fiscal year, based on all of the advanced biofuel facilities in which the producer has 50 percent or more ownership, exceeding: (1) 150,000,000 gallons of liquid advanced biofuel per year; or (2) 15,900,000 MMBTU of biogas and solid

advanced biofuel per year." Also, a parallel change was made to the definition of the term "smaller producer."

Oversight and Monitoring—§ 4288.105

Comment: One commenter believes that the proposed rule does not do enough in checking in on the progress of the biofuel. The commenter believes that, if the government is helping to fund the research, it should establish deadlines to ensure that progress is being made so that research does not become stagnant.

Response: The Agency disagrees that it does not provide sufficient oversight. The program does not provide payment for research and development activities.

Applicant Eligibility—§ 4288.110

Comment: One commenter requests that the Agency clearly state that advanced biofuels produced at a biorefinery producing multiple bioproducts are eligible for the program. According to the commenter, the future biorefinery will likely develop much like the typical oil refinery of today. In other words, one feedstock will be utilized to produce several products at one facility. In a biorefinery's case, renewable biomass will be the feedstock and multiple biofuels, biobased products and specialty renewable chemicals could be produced at the same plant or industrial facility. The commenter believes that the Agency should encourage the concept of industrial ecology and collocation of diverse product manufacturing units. The final rule for the Bioenergy Program should not limit future biorefineries that use efficient and cost effective business models. It should be specifically stated in the final rule that advanced biofuels produced at a biorefinery producing multiple bioproducts should be eligible to qualify for the program.

Response: The Agency does not exclude biofuel facilities that produce multiple products. However, payments are made only for the eligible advanced biofuel produced.

Comment: One commenter suggests that the Agency consider limiting eligible biorefineries to those with a production capacity that exceeds a certain volume. The commenter maintains that including lab scale and small pilot scale facilities biorefineries may significantly increase administration and not achieve the desired effect of the program.

Response: The Agency disagrees and does not consider administering small volume producers a burden, and considers all eligible advance biofuel producers if they provide the certifications as required in the rule.

Comment: One commenter has concerns regarding the proposed Advanced Biofuels Payments being applicable for plants only larger than 10 million gallons of production per year. In our rural communities, often times the feedstock that will be utilized may not support a plant that large. This does not mean the feedstock cannot make an impact on fuel production in the U.S.; rather, it may make more sense economically to produce this ethanol close to the fuel source. Smaller plants, with their potential to create employment and possibly reduce waste issues in small communities from waste paper, whey permeate, and other waste sources, can economically produce advanced biofuels. The commenter believes it is in the best interest of rural communities, and renewable fuel production as a whole, to allow smaller facilities such as 500,000 gallons per year or more, to qualify for these subsidies.

With producers of small amounts of waste that can be converted to advanced biofuels scattered throughout small communities in the Midwest, the Advanced Biofuels Payment can be a strong tool for economic growth in rural areas. Small plants, which are less capital intensive and require fewer infrastructures, could also be positively affected by this decision to allow smaller facilities to receive the subsidy.

Response: The proposed rule does not contain a size requirement for participation. The only size requirement pertains to the limitation of 5 percent of program funds that can be made available to advanced biofuel producers that have facilities whose combined total capacity is more than 150,000,000 gallons. As such, the proposed rule already directs the majority of the program benefits to smaller producers (*i.e.,* those with production capacities of less than 150,000,000 gallons).

Biofuel Eligibility—§ 4288.111

Comment: One commenter agrees that the program should only pay for the production of final advanced biofuel product and not to intermediary components or products that are used in the production of the final advanced biofuel product. This will significantly reduce fraudulent schemes that result in double payments for the same volume of fuel used by the market.

Response: The Agency agrees with the commenter. The program makes payments for final advanced biofuel. The components used in producing advanced biofuel are not eligible for payments.

Comment: One commenter would like to get clarity on the definition of an eligible advanced biofuel. Would an advanced biofuel be eligible if it can and is used for several potential applications, not all of which are fuel? If so, then is it necessary to demonstrate to the Agency that the volume being claimed is used as fuel? Specifically, for example, glycerin from a biodiesel facility can be used in many different applications; one of which is as fuel to generate energy. Would the production of glycerin be eligible if it can be showed that the downstream application is as a fuel?

Response: The Agency disagrees with the comment. The intent of the program is to make payments for production of advance biofuel and not for uses other than for fuel. For example, a producer produces a transportation fuel that also results in production of glycerin. If the glycerin is sold directly as a fuel, the producer would receive a payment. However, if the glycerin is sold for medical or other non-fuel sources, the producer would not receive a payment.

Biofuel Eligibility—§ 4288.111

Eligible Advanced Biofuel—Paragraph (a)

Comment: One commenter believes that, while Federal incentive programs should not choose technology winners or losers, the production of advanced biofuels for the transportation sector should be supported as much as possible to achieve the aggressive goals of the Renewable Fuels Standard (RFS). The commenter agrees that fuels eligible for the Section 9005 Program can be in the gaseous, liquid, or solid phases, but that those fuels should be used as transportation fuels, not for electricity production or other end uses. Further, if renewable electricity or gas is produced as a transportation fuel those fuels should qualify. However, if renewable feedstock is used to produce electricity or other non-mobile uses, the commenter believes that other Federal programs are in place to support such projects, including the Rural Energy for America Program. The commenter believes that advanced transportation biofuels should not have to compete against other end use products and, therefore, recommends that Advanced Biofuel Payments go toward transportation fuels only.

Response: The Agency disagrees with the commenter's recommendation to limit this program to transportation fuels only. The Agency points out that the authorizing statute does not limit this program to transportation fuels. The purpose of the program is to provide

payment to eligible advanced biofuels producers producing liquid, biogas, or solid fuels, and not to the end use of such advanced biofuels. The Agency, therefore, has not revised the rule in response to these comments.

Certification-Related Comments

Comment: A number of commenters expressed concern over the certification requirement, with several suggesting alternatives.

One commenter believes a requirement for an independent third party certificate of analysis on every load is completely unworkable and extremely expensive. According to the commenter, the cost for a full ASTM battery of test can exceed $6,000 per sample. The commenter points out that biodiesel plants perform a few indicator tests internally which suffice for the biodiesel market; to require otherwise would be cost prohibitive and unnecessary. The commenter, therefore, supports allowing biodiesel producers to provide self-certifications.

One commenter requests the Agency to clarify § 4288.105(a)(3), Certificate of Analysis. While the commenter supports that only biodiesel meeting ASTM specifications be allowed payment, the proposed rule seems to indicate that each certificate of analysis needs to be issued by a qualified, independent third party. According to the commenter, this is economically infeasible and unworkable. The commenter notes that it issues thousands of Certificate of Analysis (one must accompany each load of biodiesel loaded at the plant) and an independent third party certificate of analysis costs in the several hundred dollar range and takes several working days. The commenter, as a BQ–9000 certified plant, does receive independent third party analysis of its production on a time frame contained within its BQ–9000 certification, but is unable practically or financially to provide an independent third party certificate of analysis for every gallon of biodiesel produced, which this proposed rule seems to indicate will be required. Rather, the commenter is supportive of a requirement that a biodiesel producer self-certify that a quarterly, independent third party certificate of analysis showing ASTM standards being met is available for USDA inspection.

While not objecting to the requirement in the proposed rule that producers provide an independent certificate of analysis to verify that fuel produced in the facility meets the ASTM D6751 fuel specification, several commenters request that the Agency clarify in the final rule that an independent certificate of analysis is not required for every gallon or batch of fuel produced in a facility, because such a requirement would be cost-prohibitive and impractical. The commenters would support requiring a biofuel producer to self-certify on a quarterly basis or on a once per payment period that an independent certificate of analysis verifying that fuel produced in the facility meets applicable ASTM standards is available for review by USDA personnel consistent with other self-certification requirements provided under the program.

Response: The Agency has clarified the requirements pertaining to the independent certificate of analysis. The Certification from a blender or a third party is acceptable certification to ensure the quality of an advanced biofuel. The requirement of receiving BQ–9000 Certification was eliminated from the interim rule.

Comment: One commenter supports requirements that ensure that only high quality fuel enters the market and supports requirements that participants in this program self-certify compliance with IRS, EPA, EISA, the Clean Air Act, and ASTM D6751 quality specifications. This commenter notes that these self-certification requirements for biodiesel producers are in addition to requirements for third party certificate analysis and are more than sufficient to ensure that the fuel placed in the market is of sufficiently high quality for use, distribution, and sale. The commenter points out that it has strict internal testing with its onsite laboratory and the commenter, and its customers, require that the fuel meets or exceeds ASTM specifications before sale.

The commenter recommends that the final rule include a similar requirement that other biomass-based diesel and fuels meet applicable ASTM or equivalent standards to receive payment under the program.

Response: The Agency agrees with the commenter that appropriate certifications, such as ASTM, BQ–9000, and D6751, are beneficial for producers, distributors, and consumers. Further, the Agency has determined that appropriate certification for pipeline quality for biogas is necessary. However, in cases where biogas is not injected into a pipeline distribution system, but is used on-site for electric generation, it is not eligible for payment under the program.

Comment: One commenter notes that it has an extensive in-house quality program that analyzes and ensures that the biodiesel produced meets or exceeds the current ASTM specifications before shipping to its customers. The commenter uses round robin laboratory testing between biodiesel plants and its research group to ensure the accuracy of its lab results that the results fall under normal operating parameters. Thus, the commenter believes that its BQ–9000 certification and its strict internal quality control make an independent analysis unnecessary.

Response: The Agency disagrees with the comment regarding the independent analysis. The purpose of an independent analysis is to ensure the integrity of the advanced biofuel. The program no longer requires the BQ–9000 certification. The Agency considers certification by an independent third party to be the best way to accomplish this. The Agency has revised the requirement in the interim rule to allow the blender who purchases the advanced biofuel to provide the third-party certification quarterly only if the blender is not associated with the facility.

Comment: One commenter states that the requirement for biodiesel producers to self-certify compliance with IRS, EPA, EISA, Clean Air Act and applicable ASTM standards provides sufficient, overlapping enforcement mechanisms to ensure that the biodiesel being produced is of sufficient quality for sale and use in the marketplace. Further, the commenter does not object to the requirement that producers provide an independent certificate of analysis to verify that fuel produced in the facility meets the ASTM D6751 fuel specification. However, the commenter makes several suggestions.

First. The commenter recommends that the Agency clarify in the final rule that an independent certificate of analysis is not required for every gallon or batch of fuel produced in a facility, as this requirement would be cost-prohibitive and impractical. The commenter indicates that it would support requiring a biofuel producer to self-certify on a quarterly basis that an independent certificate of analysis verifying that fuel produced in the facility meets applicable ASTM standards is available for review by USDA personnel consistent with other self-certification requirements provided under the program.

Second. The commenter notes that, in some cases, requiring additional certifications from a third party is unnecessary, onerous, and costly for biodiesel producers. The additional cost would negate some of the benefits that the Bioenergy Program is intended to provide. Some biodiesel producers have their own in-house lab that performs their analysis for in-process work, as well as finished product and shipments.

These companies generate their own Certificates of Analysis as needed. While the commenter states that it appreciates the Agency's desire to ensure that advanced biofuels that are eligible for the Bioenergy Program are of sufficient quality, the commenter believes that, in most cases, this can be accomplished and verified without requiring the redundant use of an outside lab.

Response: The Agency's intent was not to have a certification on each gallon sold and the rule has been revised to clarify this. As discussed in a previous response, certification is to ensure the quality of the advanced biofuel produced is at standards to be used in the market. The Agency will accept a certification from the blender who purchases the advanced biofuel provided the blender is not associated with the facility.

Comment: One commenter recommends allowing self-certification using a combination of IRS, EPA, ASTM, and BQ–9000 documentation. While the commenter does not object to the requirement in the proposed rule that producers provide a combination of IRS, EPA, and quality certificates as documentation to meet program requirements, the commenter recommends that producers be able to self-certify their fuel quality specifications by offering internally-created Certificates of Analysis. The commenter is confident in its network's self-certification because the commenter is approved by the National Biodiesel Accreditation Committee's BQ–9000 Producer program. The commenter, thus, recommends that the Agency include this quality program in the requirements for program participation.

Other commenters state that, in some cases, requiring additional certifications from a third party is unnecessary, onerous, and costly for biodiesel producers. The additional cost would negate some of the benefits that the Bioenergy Program is intended to provide. Some biodiesel producers have their own in-house lab that performs their analysis for in-process work, as well as finished product and shipments and generate their own Certificates of Analysis as needed. While appreciating the Agency's desire to ensure that advanced biofuels that are eligible for the Bioenergy Program are of sufficient quality, the commenters believe in most cases this can be accomplished and verified without requiring the redundant use of an outside lab.

One commenter notes that this section states that the Agency will review the producer records to ensure that each certificate of analysis has been issued by a qualified independent third party, but later the proposed rule, when detailing the certifications that are needed for biodiesel and biomass-based diesel producers, suggests that a self-certification is required. The commenter supports allowing biodiesel producers to provide self-certifications.

One commenter supports efforts to ensure that only fuel of appropriate quality is entered into commerce. The commenter, therefore, supports requiring participants to self-certify that biodiesel receiving payment under the program meets the ASTM D6751 fuel specification.

Another commenter states that the ASTM D6751 standard is an appropriate and sufficient means of ensuring that the biodiesel production supported by the Bioenergy Program meets the necessary quality standards and that biodiesel production supported under the Bioenergy Program should be required to meet ASTM D6751.

In addition, both commenters recommend that other biomass-based diesel and liquid hydrocarbons receiving payment under the program be similarly required in the final rule to meet an applicable ASTM fuel specification to receive payment under the program.

Response: The Agency disagrees with the comment regarding the independent analysis. The purpose of an independent analysis is to ensure the integrity of the advanced biofuel. The Agency's intent was not to have a certification on each gallon sold. The Agency will accept a certification from the blender who purchases the advanced biofuel only if the blender is not associated with the facility.

Comment: Many commenters express concern about the proposed requirement for BQ–9000 certification and each recommend that it be removed from the rule.

One commenter notes that BQ–9000 certification is a voluntary program and is used like a status symbol. According to the commenter, not many belong to this program and it is very expensive. The commenter states that, even though they do not participate in the BQ–9000 program, their biodiesel is as good as those who do participate. The commenter points out that they participated in the payment program last year, receiving $1,700, but that it would cost the commenter 10's of thousands of dollars to belong to BQ–9000 program. Therefore, the commenter recommends that the BQ–9000 certification be taken out of the rule in order to be fair to all biodiesel producers.

One commenter makes similar comments, pointing out that the proposed rule already requires that ASTM D6751 standards be met. In the commenter's situation, the counterparties to our sales require a third party analysis of the fuel showing that it meets ASTM standards. Therefore, according to the commenter, a BQ–9000 certificate is meaningless and would impose additional recordkeeping burdens on the commenter's facility. Further, according to the commenter, the BQ–9000 certification does not guarantee compliance with ASTM standards.

One commenter notes that participation in the BQ–9000 program, which is set up by the National Biodiesel Board, is not required to be a biofuel producer. According to the commenter, they have ASTM testing that they must pass and that doing so qualifies the commenter as a producer. Therefore, the commenter believes that BQ–9000 certification should not be a requirement for this program.

One commenter does not think it necessary to require biodiesel producers provide BQ–9000 certification. According to the commenter, neither EPA nor the IRS require BQ–9000 for RFS–2 or the blender credit, but instead both require ASTM–6751–09, which the commenter thinks is appropriate. Because BQ–9000 is a costly requirement for small producers, the commenter believes requiring it will not encourage innovation. The commenter recommends using the same requirements as IRS and EPA as the easiest solution.

One commenter does not believe it is necessary to require the BQ–9000 certification for program eligibility under the proposed rule. The commenter notes that, while the BQ–9000 program is a valuable and effective tool for the biodiesel industry, it is not an appropriate enforcement tool and is not conducive to use as a requirement for eligibility under the Bioenergy Program.

One commenter also states that the BQ–9000 certification requirement provided for in the proposed rule is unnecessary and duplicative, and should not be included in the final rule. Though the commenter believes in the value of the BQ–9000 program, it was neither designed nor envisioned to serve as a regulatory enforcement tool. The commenter points out that the Agency, through the other certifications required under the program, has multiple reliable methods to ensure that fuel provided under this program meets the required ASTM D6751 specification.

One commenter points out the requirement for BQ–9000 is redundant and unnecessary. BQ–9000 is a voluntary and cooperative program for the accreditation of producers. Regardless, all biodiesel producers must conform to ASTM 6751–08 as amended in order for the fuel to be recognized and qualified for transportation use. The Agency has multiple reliable methods that are statutorily defined for its use to validate the claims of the producers.

Two commenters note that a biodiesel producer must be operational for 6 months before it can receive BQ–9000 certification. The USDA Bioenergy Program contemplates providing payments to entities that are new. Thus, requiring BQ–9000 certification would prevent any facilities that are less than 6 months old from participating. In all likelihood, it would make some biodiesel producers ineligible for even longer periods, as 6 months is the minimum time required to obtain BQ–9000 certification.

One commenter believes that the requirements for biodiesel producers to meet the registration requirements with EPA for the RFS, meet the quality requirements per ASTM D6751, and provide the RFS Renewable Identification Number (RIN) are sufficient to ensure that the biodiesel being produced is of sufficient quality for sale and use in the marketplace. The commenter is concerned with the inclusion of the BQ–9000 certification required for program eligibility under the proposed rule. However, while the BQ–9000 program is a valuable and effective tool for the biodiesel industry, it is not an appropriate enforcement tool and is not conducive to use as a requirement for eligibility under the Bioenergy Program.

The ASTM D6751 standard is a more appropriate and sufficient means of ensuring that the biodiesel production supported by the Bioenergy Program meets the necessary quality standards. Biodiesel production supported under the Bioenergy Program should be required to meet ASTM D6751.

One commenter points out that the BQ–9000 program is only for biodiesel production so biomass-based diesel and liquid hydrocarbons derived from biomass would not be able to meet this requirement. Further, the BQ–9000 is a voluntary program run by an industry-based organization; it is inappropriate to regulate this program as a requirement for producers. Finally, it discriminates against smaller plants who cannot afford to meet the recordkeeping requirements of this program.

One commenter, while a strong supporter of the BQ–9000 program, believes the other quality assurance mechanisms contained in this rule—mandatory self-certification for compliance with IRS, EPA, EISA, CAA and relevant ASTM standards—are more than sufficient to allow only ASTM D6751 biodiesel to qualify for payment under this program. According to the commenter, maintaining the BQ–9000 certification requirement will be much more likely to prevent smaller producers and new facilities from participating in this program than to enhance the quality of eligible fuel.

One commenter questions the need for BQ–9000 certification as a requirement for program eligibility and believes it unnecessary. While acknowledging that BQ–9000 certification is an important and valuable tool for the biodiesel industry to consistently produce a high quality fuel, according to the commenter, BQ–9000 was set up as a best practices industry standard and is not designed for regulatory enforcement. The commenter believes that the certification requirements listed above make this requirement duplicative, unnecessary and it should be removed from the final rule.

One commenter provides extensive discussion as to why BQ–9000 certification is unnecessary and duplicative, and should not be included in the final rule. The commenter points out that BQ–9000 is a cooperative and voluntary program for the accreditation of producers and marketers of biodiesel. The program provides a set of best practices for biodiesel producers to utilize when monitoring important fuel production activities such as sampling, testing, storage, sample retention and shipping. Though the commenter believes in the value of this program, the BQ–9000 program was neither designed nor envisioned to serve as a regulatory enforcement tool. The commenter details the various requirements that biodiesel producers must address:

- Register with the Internal Revenue Service (IRS). The Internal Revenue Code specifically requires fuel to meet the ASTM D6751 fuel specification to qualify for the biodiesel tax incentive. Biodiesel producers are required to register with the IRS, and the fuel of both new applicants for registration as well as existing registrants is tested by the IRS at its independent laboratory to ensure that registrant produces a fuel meeting the ASTM D6751 fuel specification. In addition, IRS excise tax personnel periodically test fuel at various stages of the distribution chain to ensure it meets the ASTM D6751 fuel specification.
- Meet the Clean Air Act's Section 211 Fuel Registration Requirements. In general, fuel entered into commerce in the U.S. must be registered with the Environmental Protection Agency (EPA), consistent with Section 211 of the Clean Air Act. To comply with these registration requirements, a biodiesel producer's fuel must meet the ASTM D6751 fuel specification.
- RFS–2 EPA Registration. The Energy Independence and Security Act (EISA) significantly expanded the previous Renewable Fuel Standard and provides specific volume requirements for advanced biofuels, including biomass-based diesel. For fuel to qualify under the program and generate RINs, which are ultimately used by obligated parties to show compliance under the program, a biofuel producer must re-register with the EPA. As part of this registration process, a producer must provide, among other things:
  - A description of the types of renewable fuels that the producer intends to produce at the facility;
  - A list of all feedstock the facility is capable of utilizing to produce fuel;
  - A description of the facility's renewable fuel production process;
  - A list of the facility's process energy fuel types and location from which the fuel was produced or extracted; and
  - An independent third party engineering review. Biofuel producers must also create a Central Data Exchange (CDX) Account that allows registrants to update facility and company information as well as file quarterly and annual reports required by EPA under the RFS–2 program.

In addition, the CDX Account allows a registrant to access the EPA Moderated Transaction System (EMTS), the automated system through which RIN generation and transactions are recorded. The requirement in the proposed rule that biodiesel producers self-certify compliance with IRS, EPA, EISA, Clean Air Act and applicable ASTM standards—as well as provide periodic independent third party certificate of analysis as supported by the commenter—provides redundant enforcement mechanisms to ensure that only biodiesel meeting the ASTM D6751 fuel specification receives payment under the program.

Response: The Agency agrees with the comments related to the BQ–9000 certification and has eliminated this requirement from the interim rule. The BQ–9000 certification, while considered a valuable program, is not necessary in order to produce quality advanced biofuels. Furthermore, this requirement

adds additional burden to only one industry segment.

Renewable Identification Number (RIN)

Comment: Several commenters question the need to supply the RIN.

One commenter states that the RIN number is not necessary, but that only the RIN type is needed, which is the D–Code for generating RINs, which are 3 through 7.

One commenter, pointing out that a RIN is EPA's 38-character number that is assigned to each gallon of biofuel, seeks clarification if the Agency wants all 30 million gallon RINs that the commenter assigns on a yearly basis or exactly what is being requested. The commenter states that, if the Agency is asking for proof that it can manufacture advanced biofuels, EPA requires all advanced biofuel producers to be registered with EPA as an advanced biofuel producer by using an independent third party engineering review. The commenter is supportive of providing the Agency a copy of this third party engineering review or self certifying that it has a third party engineering review of being an advanced biofuel producer.

One commenter does not understand the requirement for a RIN number, stating that that the Agency should rely on the IRS and the EPA requirements for fuel quality assurance. The RIN is used as a product tracking document for purposes of compliance with the RFS and not all fuel that meets the requirement for the USDA bioenergy program will necessarily have a RIN attached or assigned. USDA audited this program for several years and has not required RINs assigned to fuel. The commenter maintains that USDA's current audit is sufficient to determine if eligible fuel was produced and that no further requirements are needed. The commenter further believes that requiring participants to match RINs to the USDA program may result in complete confusion due to the different fuel eligibilities and the fact that some fuel may not have RINs assigned. Should further assurances be needed, the commenter believes that BQ–9000 certification is adequate for purposes of the program.

One commenter recommends eliminating the requirement to report the "RIN" because the commenter does not believe the RIN will be an accurate method to determine production for the following reasons.

1. The RIN as a 38-digit number will not exist as defined by RFS–2 EMTS reporting.

2. Each Advance Biofuel Producer will have either one or multiple RIN generating values. For example a biodiesel producer may also produce a renewable diesel. Biodiesel has a RIN generation value of 1.5 while renewable diesel has a value range of 1.5 to 1.7 depending on process. The same scenario would also apply if a biodiesel facility were also an ethanol producer or vice versus. The Agency would be forced to mathematically prepare for the reverse computation to obtain the actual gallons produced. A RIN gallon is not the same as a produced gallon in the cases of biomass based diesels.

3. The commenter believes that access to the report is statutorily limited to use by the EPA for compliance purposes.

The commenter is also uncertain as to the use as proposed in the rule. The commenter notes that RINs can be generated as either sold or produced and in this case would further confuse attempts by the Agency to accurately determine production—a producer may report gallons sold versus gallons produced. The commenter still believes the use of production records as obtained from the producer similar to the Fiscal Year 2009 NOCP is valid and consistent with program goals.

Response: The Agency continues to believe that the reporting of the applicable RIN for each advanced biofuel documents compliance with EPA regulations. The Agency has revised the text of proposed § 4288.120(a)(3)(iii) to clarify the requirement to submit the Renewable Identification Number for the advanced biofuel, if a Renewable Identification Number has been established for the advanced biofuel. In the interim rule the text now reads: "If a Renewable Identification Number has been established, the advanced biofuel producer shall also provide documentation of the most recent Renewable Identification Number for a typical gallon of each type of advanced biofuel produced." The Agency requires that, if a RIN is available for an advanced biofuel, it is provided in the application. The BQ–9000 is not a mandatory certification for the producers of advanced biofuel and, therefore, not all biodiesel producers have this certification.

Woody Biomass

Comment: One commenter states that the intent of the language certifying that woody biomass could not be used as a higher value wood product is to ensure that wood that could be used for dimensional lumber is not used as biomass material for production of alternative fuels. However, according to the commenter, even existing forest thinning and slash could be used in wood pellets or particle board, which would be "higher value." The commenter does not believe the intent is to eliminate all woody biomass as a feedstock. Therefore, the commenter suggests that the language be clarified as follows:

"In addition, for woody biomass feedstock, the applicant must submit documentation that the woody biomass feedstock cannot be used as higher value dimensional lumber."

Another commenter does not believe that the Agency has the statutory authority to require that applicants document that their woody biomass could not have been used in a higher-value product. According to this commenter, the Farm Bill definition makes clear that such a restriction could only apply to applicants seeking payment for advanced biofuels derived from woody biomass sourced from Federal land. The commenter, therefore, urges the Agency not to finalize a provision so clearly contrary to express statutory language.

In support of this position, the commenter reiterates comments it made on a similar restriction in the BCAP proposal that was inconsistent with the Farm Bill definition of biomass. Under Section 9001 of the Farm Bill, an advanced biofuel need only be derived from "renewable biomass other than corn kernel starch." Thus, a fuel is an advanced biofuel so long as it is produced from materials meeting the definition of renewable biomass. Looking to the definition of renewable biomass in the 2008 Farm Bill, the only restriction relating to higher value products can be found in Section 9001(12)(A)(ii), relating to Federal land. There, Congress included the higher-value product limitation with regard to "materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands." Section 9001(12)(B), governing the definition of renewable biomass as it relates to biomass derived from non-Federal land, contains no such value-added restriction. Indeed, this section refers to "any organic matter that is available on a renewable or recurring basis from non-Federal land" and explicitly includes "wood waste and wood residues." However, the definition contains no such restriction as it relates to non-Federal land, nor does it leave room for statutory interpretation. The failure of Congress to include the higher-value product restriction for biomass sourced from non-Federal lands should not be construed as Congressional "silence" on the issue, as the CCC erroneously argued in the BCAP proposal. Where Congress specifically speaks to an issue in one

section of a statute, and omits a similar restriction in a parallel section, it is not "silence," but rather an expression of Congressional intent through the creation of a clear statutory scheme. *See, e.g., Duncan* v. *Walker,* 533 U.S. 167 (2001). In this case, the statutory scheme provides for considerable restriction of biomass sourced from Federal land, while simultaneously not interfering with the rights of private landowners to utilize their biomass without additional Federal restrictions beyond otherwise applicable law.

Finally, the commenter states that if the Agency chooses to finalize such a scheme, statutory authority aside, the commenter suggests that it not categorically exclude biomass that could be used in higher-value products. The commenter believes there is some woody biomass that, while it could be used as a higher-value wood-based product, will not be for numerous reasons, including market access. The rule should allow for payments for advanced biofuels using renewable biomass that could be used as inputs for higher-value products, but that have not been previously utilized on a facility-specific or regional basis. Thus, if there is no historical usage of mill wastes for higher value products at a particular mill or region, the Agency should be willing to offer payments for biofuels derived from an underutilized resource.

Response: The Agency agrees with the comment that the proposed rule was inconsistent with the 2008 Farm Bill provision that limited the "higher-value products" requirement to "materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands." Therefore, the Agency has revised the rule accordingly.

With regard to the comment requesting that the Agency revise § 4280.120(a)(3)(v) to reference "higher value dimensional lumber," the Agency disagrees with this suggestion. The Agency is satisfied that the proposed language ("higher value wood based product") is consistent with the statutory language, which uses the phrase "higher value product." Thus, the Agency has not revised the rule in response to this suggestion.

The Agency has also not revised the rule with regard to the suggestion not to categorically exclude biomass that could be used in higher-value products, but to take into consideration whether the renewable biomass had not been previously utilized. While the Agency recognizes that the "higher value" provision as proposed might lead to such an outcome, the revision to the rule limiting the "higher value" provision to wood sources from Federal Forest System land and public lands would likely reduce significantly the commenter's concern. For example, the rule would not affect the usage of mill wastes as cited in the commenter's example. Further, while the rule, as revised, would subject all wood sourced from Federal Forest System land and public lands to this "higher value" provision, the Agency is satisfied that the revised rule is consistent with the authorizing statute.

Contract—§ 4288.121

Comment: Three commenters believe that multi-year contracts are acceptable and desirable. One commenter points out that multi-year contracts result in less paperwork. One commenter suggests a minimum contract length of 10 years, pointing out that providing long term contracts would help with financing of additional advanced biofuel capacity.

The third commenter requests that the Agency consider allowing for five-year contracts with eligible advanced biofuels producers. The multi-year contracts should allow for an annual review of the baseline of production so that the producer has the opportunity to continue to demonstrate its incremental increase in production. The annual review of contracts should occur from October 1 through October 31 to stay consistent with the Federal fiscal year. The commenter believes that allowing multi-year contracts will assist USDA in stabilizing the biofuels industry. Advanced biofuels producers that are new to the commercialization process will greatly benefit from this as it will allow them to offset the ramp up costs associated with bringing a new plant online. In addition, this will meet the Federal government's goals in the reduction of paperwork.

Response: The Program is for the term of the 2008 Farm Bill and only has funding through 2012. The proposed rule allows for multi-year contract until either the producer or the Agency terminates the contract. The producer, once eligible for the program, must sign-up annually.

Comment: One commenter recommends that the contract used by the Agency, Form RD 4288–2, should not allow for a termination based on the Program being discontinued or not funded during a fiscal year. Instead, the commenter recommends that the termination due to either of these reasons should only be allowed from one fiscal year to the next during the application process, not at any time.

Response: This program is statutorily funded, providing mandatory funding through 2012. In the event there are no funds available for the program, the contract would be terminated due to lack of appropriated funding. The Agency would not terminate the contract during a fiscal year due to the program being discontinued or lack of funding.

Payment Applications—§ 4288.130

Frequency of Submittal

Comment: Several commenters express support for submitting payment applications and receiving payments on a quarterly basis. One of the commenters notes that this will be beneficial to producers and to USDA in their administration of the program, including appropriate management of the program funds to ensure that all annual mandatory funding levels are met. Another commenter supports USDA's policy objective of providing payments on a more frequent basis to give producers a more reliable and useful income stream.

One commenter suggests that semi-annual payments be made, which allow producers to maintain an adequate cash flow balance throughout the entire year versus a once-a-year payment. According to the commenter, biodiesel producers historically utilize program payments to supplement their working capital. With the six-month lapse of the biodiesel blenders tax credit, biodiesel producers have an urgent need for working capital; specifically as the tax credit is reinstated and raw materials must be purchased before sales may be in place.

One commenter states that, ideally, payments could be made on a monthly basis, thereby providing the Agency a running total of obligations incurred as well as having an idea of total likely obligations as the year progresses. If adjustments need to be made due to under or over payment rates due to volume such adjustments in the payment rate can be made as the year unfolds.

One commenter, in support of quarterly payments, suggests that the total funding amounts to be provided during a fiscal year should be divided equally among the four quarters. The quarterly payments would be determined by dividing the amount of funding available for the quarter by the amount of actual production recorded that quarter.

Response: Requesting monthly payments would increase the paperwork burden for the producer and the administrative burden for the Agency. The Agency is satisfied that the quarterly payments will meet the industry's needs.

With regard to the suggestion on how to determine the quarterly payments, the Agency has changed the rule to make payments quarterly on actual production using the amounts allocated for each quarter.

Payment Provisions—§ 4288.131

Comment: One commenter supports that production switched between owned production locations is considered in aggregate.

Response: The interim rule does not allow for producers to switch production from one facility to another and aggregate production for the purpose of collecting payments under this program. The Agency requires producers to sign-up for each facility that produces an advanced biofuel for which they are requesting payment.

Other Payment Provisions

Paragraph (d)(1)

Comment: One commenter believes that the proposed language on renewable energy content could be interpreted to include a reduction for all energy used in the production process. According to the commenter, the intent of this language is to prevent advanced energy payments for the denaturant required by the ATF in ethanol production. However, because all production processes use energy in the many forms (*e.g.,* electricity, natural gas), the commenter believes the language should be modified to specifically exclude energy used in the production process. Therefore, the commenter suggests the following language: "The renewable energy content of the final product will be adjusted for any blending of nonrenewable additives or products after the final production process."

Response: The Agency agrees with the comment that the renewable energy content of the final product is eligible for payment when the producer provides sufficient documentation for the Agency to determine the quantity produced from records of sale of the advanced biofuel. The current language accurately reflects that only renewable energy content of the final product is eligible for payment.

Remedies—§ 4288.136

Comment: One commenter believes that the consequences for fraud in the proposed rule seem weak. According to the commenter, to simply take away funding is not enough because funds have already been spent. The commenter recommends including penalties such as repayment to prevent fraud.

Response: The Agency disagrees with the comment that the only remedy is taking away funding. Both §§ 4288.134 and 4288.135 contain provisions that provide the Agency additional remedies. To make this clearer, the Agency is revising the introductory text to § 4288.136 to make reference to these two sections.

General—Agree

Comment: One commenter supports the proposed rule, agreeing with the guidelines outline what qualifies as a biofuel and the process for maintaining grants is acceptable.

Response: The Agency acknowledges the commenter's support, but notes that this program involves contracts and not grants.

General—Disagree

Comment: One commenter states that this program should not even be in place. The commenter believes that the very fact that a government agency has to purchase this fuel indicates that there is no demand for it and it is not economically viable and will not be supported by the market.

Response: The Agency disagrees with the comment. The program supports production of advance biofuel as mandated by statute.

Comment: One commenter states that bio-fuels generally have been getting tax breaks for years now, which has allowed them to be "competitive" with other fuels and which have resulted in increased feedstock and food costs as the 'raw materials' for the fuel—corn, soybeans, *etc.*—have gone to fuel manufacture rather than feed for livestock and for human consumption. The continuation of these tax breaks will only further distort the supply and demand of these important agribusinesses.

Response: Advanced biofuel from corn kernel starch is not eligible under this program. Many advanced biofuels are produced from non-feed grains (*e.g.* soybean oil versus soybean meal) and from other waste products which are not normally considered as foods. The payments the producers received are reported to the IRS and they must claim the payment as income resulting in possible payment of taxes.

Timing

Comment: A number of commenters encourage the Agency to conclude the rulemaking process as soon as is possible and make the total $80 million in mandatory funding provided by statute available in Fiscal Year 2010. Commenters make this request because the biodiesel industry is currently facing significant economic challenges, including, as noted by one commenter, the uncertainty created by the December 31, 2009 expiration of the $1 Federal biodiesel blending credit. This will provide needed financial support to maintain and bolster the domestic production of advanced biofuels, consistent with statute and the will of Congress. According to one commenter, for the past five and a half months, the biodiesel industry has been devastated by the expiration of the Federal biodiesel blenders tax credit. As a result of this lapse in the tax credit, many biodiesel plants have shut down and biodiesel production in the U.S. has been ground nearly to a halt.

Response: The Agency acknowledges the challenges faced by the entire biofuel industry and has expedited the rulemaking process.

Funding

Comment: Three commenters state that payments of the full Fiscal Year 2010 statutorily required funding ($55 million) plus the funding rolled over from Fiscal Year 2009 funds ($25 million) should be made to all eligible producers, as intended by Congress under the statute, under a final rule within Fiscal Year 2010. Similarly, another commenter, noting the amount of funds announced as being available in the NOFAs issued in Fiscal Year 2009 and Fiscal Year 2010 is only half of the funding that should be appropriated to the program via the statute, urges the Agency to increase the appropriation for this program to $80 million for Fiscal Year 2010.

Response: The Agency acknowledges the challenges faced by the entire biofuel industry. The Agency published a Notice of Contract Proposal in the **Federal Register** of May 6, 2010 (75 FR 24865), and received an apportionment of $40 million. With respect to increasing the appropriations for this program, that decision would be made by Congress.

Comment: One commenter does not support making further payments under the NOFA issued March 12, 2010 (75 FR 11840), or May 6. According to this commenter, it would be better to get the final rule completed and make payments under such rules than continue to make payments under the NOFA.

One commenter similarly suggests that the Agency terminate the Fiscal Year 2010 NOCP and make all Fiscal Year 2010 payments under the final version of the proposed rule. In support of this position, the commenter refers to the May 6, 2010, NOCP to eligible participants that produced advanced

biofuels in Fiscal Year 2010, which included the United States citizenship requirement for which the Agency provided no reasoning for incorporating this requirement and in which the Agency provided no justification for, in effect, abandoning the rulemaking process which it started less than a month before insofar as Fiscal Year 2010 payments under the program are concerned. According to the commenter, the passage of time since the relevant statute was passed in 2008 makes it untenable for anyone to argue that the "good cause" exception to the rulemaking requirements applies to decisions regarding Fiscal Year 2010 payments.

Another commenter states that, because money is still available for 2009 and 2010 production, new facilities and new production should be allowed to participate and that the rule prohibiting such production and such facilities be reconsidered.

Response: The Agency acknowledges the challenges faced by the entire biofuel industry and has expedited the rulemaking process. The Agency has canceled the Notice of Contract Proposal published on May 6, 2010 in the **Federal Register**. This interim rule provides producers who are foreign-owned or non-rural to apply for payments under this program.

IV. Advanced Biofuel Payment Program Fiscal Year 2010 Applications

In the interim rule for the Advanced Biofuel Payment Program, the Agency has revised the eligibility criteria such that non-rural biofuel facilities and foreign-owned biofuel facilities are eligible for the program. The Notice for Contract Proposal (NOCP) published on May 6, 2010 (75 FR 24865) excluded non-rural biofuel facilities and foreign-owned biofuel facilities from the program. To conform that Notice with this interim rule, the Agency is incorporating provisions in the interim rule for applicants to apply for Fiscal Year 2010 funds and these interim rule provisions supersede the provisions specified in the May 6, 2010 NOCP. The effect is to cancel the May 6, 2010 NOCP and replace it with the provisions found in this preamble and in this interim rule.

As noted under the **SUPPLEMENTARY INFORMATION** section of this preamble, the Agency will be accepting applications for participation in this program for Fiscal Year 2010 funding from the date of publication through 60 days after the date of publication of the interim rule. The Agency notes that this time period is the same as the comment period for the interim rule. The Agency is accepting applications for Fiscal Year 2010 during the comment period for this interim rule in order to expedite the process for awarding Fiscal Year 2010 funds. While the Agency will be accepting applications during the interim's rule comment period, it will not make any decisions on which applications will receive Fiscal Year funding until the interim rule is effective.

The Agency notes that it will provide funding information for Fiscal Year 2011 and subsequent fiscal years through notices of funding availability.

A. Funding Information

1. *Available funds.* The Agency is authorizing up to $80 million in budget authority for this program in Fiscal Year 2010.

2. *Number of Payments.* Under § 4288.190, payments to participating advanced biofuel producers will be made for actual production produced from October 1, 2009 through September 30, 2010.

3. *Range of Amounts of Each Payment.* The amount of each payment will depend on the number of eligible advanced biofuel producers participating in the program for Fiscal Year 2010, the amount of advanced biofuels being produced by such advanced biofuel producers, and the amount of funds available.

4. *Contract length.* The contract will remain in effect until terminated, as provided for in 7 CFR 4280.121.

5. *Type of Instrument.* Payment.

B. Eligibility Information

The eligibility requirements for advanced biofuel producers seeking payments under this program for Fiscal Year 2010 are found in §§ 4288.110 through 4288.113.

C. Application and Submission Information

1. *Address to Request Applications.* Contract and Payment Application forms are available from the USDA, Rural Development State Office, Renewable Energy Coordinator. The list of Renewable Energy Coordinators is provided in the **SUPPLEMENTARY INFORMATION** section of this preamble.

2. *Content and Form of Submission.* The enrollment provisions, including application content and form of submission, are specified in §§ 4288.120 and 4288.121.

3. *Submission Dates and Times.*

(i) *Enrollment.* Advanced biofuel producers who had eligible production at any time during Fiscal Year 2010 must enroll in the program by April 12, 2011. Applications received after this date will not be considered by the Agency for Fiscal Year 2010 payments. Applicants who submitted an application pursuant to the May 6, 2010 NOCP must submit a new application under this interim rule to be considered for a Fiscal Year 2010 payment.

(ii) *Payment applications.* Advanced biofuel producers must submit Form RD 4288–3 by 4:30 p.m. local time May 12, 2011. Payment will be made for the time period October 1, 2009 through September 30, 2010.

4. *Funding Restrictions.* For Fiscal Year 2010, not more than 5 percent of the funds shall be made available to eligible producers with a refining capacity exceeding 150,000,000 gallons of a liquid advanced biofuel per year or exceeding 15,900,000 million BTUs of biogas and solid advanced biofuel per year. In calculating whether a producer meets either of these capacities, production of all advanced biofuel facilities owned or operated by the producer will be totaled. In addition, not more than 5 percent of the funds shall be made available for the production of eligible solid advanced biofuels produced from forest biomass.

D. Payment Provisions

Fiscal Year 2010 payments will be made according to the provisions specified in § 4288.190.

E. Environmental Review

All recipients under this interim rule are subject to the requirements of 7 CFR part 1940, subpart G. However, 7 CFR 1940.310(c)(1) excludes this activity. In accordance with § 1940.310(c)(1), if a program provides assistance that is not related to the development of a specific site, it is excluded from conducting an environmental review. Rural Development's compliance with the National Environmental Policy Act of 1969 (NEPA) is implemented in its regulations at 7 CFR part 1940, subpart G. Applicants whose proposal involves additional facility construction should provide Form RD 1940–20 as part of this application. RD will then determine whether the approval falls under § 1940.310(c)(1), which categorically excludes the action from NEPA compliance.

List of Subjects in 7 CFR Part 4288

Administrative practice and procedure, Energy—advanced biofuel, Renewable biomass, Reporting and recordkeeping.

For the reasons set forth in the preamble, title 7, chapter XLII of the Code of Federal Regulations, is amended as follows:

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILIIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4288—PAYMENT PROGRAMS

■ 1. The authority citation for part 4288 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

■ 2. Subpart B is added to part 4288 to read as follows:

Subpart B—Advanced Biofuel Payment Program

General Provisions

Sec.
4288.101 Purpose and scope.
4288.102 Definitions.
4288.103 Review or appeal rights.
4288.104 Compliance with other laws and regulations.
4288.105 Oversight and monitoring.
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Authority: 5 U.S.C. 301.

Subpart B—Advanced Biofuel Payment Program General Provisions

§ 4288.101 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to support and ensure an expanding production of advanced biofuels by providing payments to eligible advanced biofuel producers.

(b) *Scope.* This subpart sets forth, subject to the availability of funds as provided herein, or as may be limited by law, the terms and conditions an advanced biofuel producer must meet to obtain payments under this Program from the United States Department of Agriculture for eligible advanced biofuel production. Additional terms and conditions may be set forth in the Program contract and payment agreement prescribed by the Agency.

§ 4288.102 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

Advanced biofuel. A fuel that is derived from renewable biomass, other than corn kernel starch, to include:

(1) Biofuel derived from cellulose, hemicellulose, or lignin;

(2) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);

(3) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;

(4) Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;

(5) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;

(6) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; or

(7) Other fuel derived from cellulosic biomass.

Advanced biofuel producer. An individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that produces and sells an advanced biofuel. An entity that blends or otherwise combines advanced biofuels into a blended biofuel is not considered an advanced biofuel producer under this Program.

Agency. The USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Alcohol. Anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, rendered unfit for beverage use, produced at a biofuel facility and in a manner approved by the Bureau of Alcohol, Tobacco, Firearms, and Explosives for the production of alcohol for fuel; or

(2) As denatured alcohol used by blenders and refiners and rendered unfit for beverage use.

Alcohol producer. An advanced biofuel producer authorized by ATF to produce alcohol.

ATF. The Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice.

Biodiesel. A mono alkyl ester, manufactured in the United States and its territories, that meets the requirements of the appropriate ASTM International standard.

Biofuel. Fuel derived from renewable biomass.

Biofuel facility. A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products and may produce electricity.

Blender. A blender is a processor of fuels who combines two or more fuels, one of which must be an advanced biofuel, for distribution and sale. Producers who blend one or more of their own fuels are not blenders under this definition.

Certificate of analysis. A document approved by the Agency that certifies the quality and purity of the advanced biofuel being produced. The document must be from a qualified, independent third party.

Contract. Form RD 4288–2, "Advanced Biofuel Payment Program Contract," signed by the eligible advanced biofuel producer and the Agency, that defines the terms and conditions for participating in and receiving payment under this Program.

Eligible advanced biofuel producer. A producer of advanced biofuels that meets all requirements of § 4288.110 of this subpart.

Eligible renewable biomass. Renewable biomass, as defined in this section, excluding corn kernel starch.

Eligible renewable energy content. That portion of an advanced biofuel's energy content derived from eligible renewable biomass feedstock. The energy content from any portion of the biofuel, whether from, for example, blending with another fuel or a denaturant, that is derived from a non-eligible renewable biomass feedstock (*e.g.,* corn kernel starch) is not eligible for payment under this Program.

Enrollment application. Form RD 4288–1, "Advanced Biofuel Payment Program Annual Application," which is submitted by advanced biofuel producers for participation in this Program.

Ethanol. Anhydrous ethyl alcohol manufactured in the United States and its territories and sold either:

(1) For fuel use, and which has been rendered unfit for beverage use and produced at an advanced biofuel facility approved by the ATF for the production of ethanol for fuel, or

(2) As denatured ethanol used by blenders and energy refiners, which has been rendered unfit for beverage use.

Ethanol producer. An advanced biofuel producer authorized by ATF to produce ethanol.

Fiscal Year. A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Flared gas. The burning of unwanted gas through a pipe (also called a flare). Flaring is a means of disposal used when the operator cannot transport the gas to market or convert to electricity and cannot use the gas for any other purpose.

Forest biomass. Any plant or tree material produced by forest growth, such as trees, wood, brush, thinning, chips, and slash.

Incremental production. The quantity of eligible advanced biofuel produced at an advanced biofuel biorefinery in the fiscal year for which payment is sought that exceeds the quantity of advanced biofuel produced at the biorefinery over the prior fiscal year.

Larger producer. An eligible advanced biofuel producer with a refining capacity as determined for the prior fiscal year, based on all of the advanced biofuel facilities in which the producer has 50 percent or more ownership, exceeding:

(1) 150,000,000 gallons of liquid advanced biofuel per year; or

(2) 15,900,000 MMBTU of biogas and solid advanced biofuel per year.

Payment application. Form RD 4288–3, "Advanced Biofuel Payment Program—Payment Request," which is submitted by an eligible advance producer to the Agency in order to receive payment under this Program.

Quarter. The Federal fiscal time period for any fiscal year as follows:

(1) 1st Quarter: October 1 through December 31;

(2) 2nd Quarter: January 1 through March 31;

(3) 3rd Quarter: April 1 through June 30; and

(4) 4th Quarter: July 1 through September 30.

Renewable biomass.

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of paragraph (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Sign-up period. The time period during which the Agency will accept enrollment applications.

Smaller producer. An eligible advanced biofuel producer with a refining capacity as determined for the prior fiscal year, based on all of the advanced biofuel facilities in which the producer has 50 percent or more ownership, equal to or less than:

(1) 150,000,000 gallons of liquid advanced biofuel per year; or

(2) 15,900,000 MMBTU of biogas and solid advanced biofuel per year.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

§ 4288.103 Review or appeal rights.

A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 4288.104 Compliance with other laws and regulations.

(a) Advanced biofuel producers must comply with other applicable Federal, State, and local laws, including, but not limited to, the Equal Employment Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, The Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and 7 CFR part 1901, subpart E. This includes collection and maintenance of race, sex, and national origin data of the recipient's employee.

(b) Producers must comply with equal opportunity and nondiscriminatory requirements in accordance with 7 CFR 15d. Rural Development will not discriminate against an applicant on the bases of race, color, religion, national origin, sex, sexual orientation, marital status, familial status, disability, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

§ 4288.105 Oversight and monitoring.

(a) *Verification.* The Agency reserves the right to verify all payment applications and subsequent payments made under this subpart, as frequently as necessary, to ensure the integrity of the Program. The Agency will conduct site visits as necessary.

(1) *Production and feedstock verification.* The Agency will review producer records to verify the type and amount of biofuel produced and the type and amount of feedstocks used.

(2) *Blending verification.* The Agency will review the producer's certificates of analysis and feedstock records to verify the portion of the advanced biofuel eligible for payment.

(3) *Certificate of Analysis.* The Agency will review the producer records for quarterly payments to ensure that each certificate of analysis has been issued by a qualified, independent third party, which may include the blender only if the blender is not associated with the facility.

(b) *Records.* For the purpose of verifying compliance with the requirements of this subpart, each eligible advanced biofuel producer shall make available at one place at a reasonable time for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, and other documents related to the Program that is within the control of such advanced biofuel producer for not less than 3 years from each Program payment date.

§ 4288.106 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to this Program may be obtained from the USDA Rural Development State

Office, Rural Energy Coordinator and the USDA Rural Development Web site at *http://www.rurdev.usda.gov.*

§ 4288.107 Exception authority.

The Administrator of the Agency ("Administrator") may, with the concurrence of the Secretary of Agriculture, make an exception, on a case-by-case basis, to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the Federal government's interest.

§§ 4288.108–4288.109 [Reserved]

Eligibility Provisions

§ 4288.110 Applicant eligibility.

Sections 4288.110 through 4288.119 present the requirements associated with advanced biofuel producer eligibility, biofuel eligibility, eligibility notifications, and payment record requirements. To be eligible for this Program, the applicant must meet the requirements specified in paragraph (a) of this section and must provide additional information as may be requested by the Agency under paragraph (b) of this section. Public bodies and educational institutions are not eligible for this Program.

(a) *Eligible producer.* The applicant must be an advanced biofuel producer, as defined in this subpart.

(b) *Eligibility determination.* The Agency will determine an applicant's eligibility for participation in this Program. If an applicant's original submittal is not sufficient to verify an applicant's eligibility, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the applicant's eligibility and a timeframe in which to supply the information.

(1) If the applicant provides the requested information to the Agency within the specified timeframe, the Agency will determine the applicant's eligibility for the upcoming fiscal year.

(2) If the applicant does not provide the requested information to the Agency within the specified timeframe, the Agency will not consider the applicant any further for participation in the upcoming fiscal year. Such applicants may elect to enroll during the next sign-up period.

(c) *Ineligibility determination.* An otherwise eligible producer will be determined to be ineligible if the producer:

(1) Refuses to allow the Agency to verify any information provided by the advanced biofuel producer under this subpart, including information for determining applicant eligibility, advanced biofuel eligibility, and application payments;

(2) Fails to meet any of the conditions set out in this subpart, in the contract, or in other Program documents; or

(3) Fails to comply with all applicable Federal, State, or local laws.

§ 4288.111 Biofuel eligibility.

To be eligible for this Program, a biofuel must meet the requirements specified in paragraph (a) of this section and the biofuel's producer must provide additional information as may be requested by the Agency under paragraph (b) of this section. Notwithstanding the provisions of paragraph (a) of this section, for the purposes of this subpart, flared gases are not eligible.

(a) *Eligible advanced biofuel.* For an advanced biofuel to be eligible, each of the following conditions must be met, as applicable:

(1) The advanced biofuel must meet the definition of advanced biofuel and be produced in a State;

(2) The advanced biofuel must be a solid, liquid, or gaseous advanced biofuel;

(3) The advanced biofuel must be a final product; and

(4) The advanced biofuel must be sold as an advanced biofuel through an arm's length transaction to a third party.

(b) *Eligibility determination.* The Agency will determine a biofuel's eligibility for payment under this Program. If an applicant's original submittal is not sufficient to verify a biofuel's eligibility, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the biofuel's eligibility and a timeframe in which to supply the information.

(1) If the applicant provides the requested information to the Agency within the specified timeframe, the Agency will determine the biofuel's eligibility for the upcoming fiscal year.

(2) If the applicant does not provide the requested information to the Agency within the specified timeframe, the biofuel will not be eligible for payment under this Program in the upcoming fiscal year. Applicants may elect to include such biofuels in the application form submitted during the next sign-up period.

§ 4288.112 Eligibility notifications.

(a) *Applicant eligibility.* If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application and will assign the applicant a contract number.

(b) *Ineligibility notifications.* If an applicant or a biofuel is determined by the Agency to be ineligible, the Agency will notify the applicant, in writing, as soon as practicable after receipt of the application, as to the reason(s) the applicant or biofuel was determined to be ineligible. Such applicant will have appeal rights as specified in this subpart.

(c) *Subsequent ineligibility determinations.* If at any time a producer or an advanced biofuel is determined to be ineligible, the Agency will notify the producer in writing of its determination.

§ 4288.113 Payment record requirements.

To be eligible for Program payments, an advanced biofuel producer must maintain records for all relevant fiscal years and fiscal year quarters for each advanced biofuel facility indicating:

(a) The type of eligible renewable biomass used in the production of advanced biofuel;

(b) The quantity of advanced biofuel produced from eligible renewable biomass at each advanced biofuel facility;

(c) The quantity of eligible renewable biomass used at each advanced biofuel facility to produce the advanced biofuel; and

(d) All other records required to establish Program eligibility and compliance.

§ 4288.114–4288.119 [Reserved]

Enrollment Provisions

§ 4288.120 Enrollment.

In order to participate in the Program, a producer of advanced biofuels must be approved by the Agency and enter into a contract with the Agency. The process for enrolling in the Program is presented in this section. Advanced biofuel producers who expect to produce eligible advanced biofuels at any time during a fiscal year must enroll in the Program as described in this section.

(a) *Enrollment.* To enroll in the Program, an advanced biofuel producer must submit to the Agency a completed enrollment application during the applicable sign-up period, as specified in paragraph (b) of this section. An

original, signed hard copy of the enrollment application must be submitted as specified in the annual **Federal Register** notice for this program. All applicants, except those that are individuals, are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number, which can be obtained online at *http://fedgov.dnb.com/webform.*

(1) Eligible advanced biofuel producers must submit enrollment applications during each sign-up period in order to continue participating in this Program. If a participating producer fails to submit the enrollment application during a fiscal year's applicable sign-up period, the producer's contract will be terminated and the producer will be ineligible to receive payments for that fiscal year. Such a producer must reapply, and sign a new contract, to participate in the Program for future fiscal years.

(2) Eligible advanced biofuel producers may submit an enrollment application during a fiscal year's sign-up period even if the advanced biofuel facility is not currently producing, but is scheduled to start producing advanced biofuel in that fiscal year.

(3) The producer must furnish the Agency all required certifications before acceptance into the Program, and furnish access to the advanced biofuel producer's records required by the Agency to verify compliance with Program provisions. The required certifications depend on the type of biofuel produced. Certifications specified in paragraphs (a)(3)(i) through (a)(3)(iv) of this section are to be completed and provided by an accredited independent third party.

(i) *Alcohol.* For alcohol producers with authority from ATF to produce alcohol, copies of either

(A) The Alcohol Fuel Producers Permit (TTB F 5110.74) or

(B) The registration of Distilled Spirits Plant (TTB F 5110.41) and Operating Permit (TTB F 5110.25).

(ii) *Hydrous ethanol.* For hydrous ethanol that is upgraded by another distiller to anhydrous ethyl alcohol, the increased ethanol production is eligible for payment one time only. If the advanced biofuel producer entering into this agreement is:

(A) The hydrous ethanol producer, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the distiller stating that the:

(*1*) Applicable hydrous ethanol produced is distilled and denatured for fuel use according to ATF requirements, and

(*2*) Distiller will not include the applicable ethanol in any payment requests that the distiller may make under this Program.

(B) The distiller that upgrades hydrous ethanol to anhydrous ethyl alcohol, then the advanced biofuel producer shall include with the contract an affidavit, acceptable to the Agency, from the hydrous ethanol producer stating that the hydrous ethanol producer will not include the applicable ethanol in any payment requests that may be made under this Program.

(iii) *Biodiesel, biomass-based diesel, and liquid hydrocarbons derived from biomass.* For these fuels, the advanced biofuel producer shall certify that the producer, the advanced biofuel facility, and the biofuel meet the definitions of these terms as defined in § 4288.102, the applicable registration requirements under the Energy Independence and Security Act and the Clean Air Act and under the applicable regulations of the U.S. Environmental Protection Agency and Internal Revenue Service, and the quality requirements per applicable ASTM International standards (*e.g.,* ASTM D6751) and commercially acceptable quality standards of the local market. If a Renewable Identification Number has been established, the advanced biofuel producer shall also provide documentation of the most recent Renewable Identification Number for a typical gallon of each type of advanced biofuel produced.

(iv) *Gaseous advanced biofuel.* For gaseous advanced biofuel producers, certification that the biofuel meets commercially acceptable pipeline quality standards of the local market; that the flow meters used to determine the quantity of advanced biofuel produced are industry standard and properly calibrated by a third-party professional; and that the readings have been taken by a qualified individual.

(v) *Woody biomass feedstock.* If the feedstock is from National Forest system land or public lands, documentation must be provided that it cannot be used as a higher value wood-based product.

(4) *Supporting documentation.* Each advanced biofuel producer participating in this program for the first time must submit documentation to support the actual production and capacity reported in the enrollment application.

(5) *Additional forms.* Applicants must submit the forms specified in this paragraph with the enrollment application when applying for participation under this subpart and as needed when re-enrolling in the program.

(i) RD Instruction 1940–Q, Exhibit A–1, "Certification for Contracts, Grants and Loans."

(ii) SF–LLL, "Disclosure of Lobbying Activities."

(iii) Form RD 400–4, "Assurance Agreement."

(b) *Sign-up period.* The sign-up period is October 1 to October 31 of the fiscal year for which payment is sought, unless otherwise announced by the Agency in a **Federal Register** notice.

§ 4288.121 Contract.

Advanced biofuel producers determined to be eligible to receive payments must then enter into a contract with the Agency in order to participate in this Program.

(a) *Contract.* The Agency will forward the contract to the advanced biofuel producer. The advanced biofuel producer must agree to the terms and conditions of the contract, sign, date, and return it to the Agency within the time provided by the Agency.

(b) *Length of contract.* Once signed, a contract will remain in effect until terminated as specified in paragraph (d) of this section.

(c) *Contract review.* All contracts will be reviewed at least annually to ensure compliance with the contract and ensure the integrity of the program.

(d) *Contract termination.* Contracts under this Program will be terminated in writing by the Agency. Contracts may be terminated under any one of the following conditions:

(1) At the mutual agreement of the parties;

(2) In accordance with applicable Program notices and regulations;

(3) The advanced biofuel producer withdraws from the Program and so notifies the Agency, in writing;

(4) The advanced biofuel producer fails to submit the enrollment application during a sign-up period;

(5) The Program is discontinued or not funded;

(6) All of a participating advanced biofuel producer's advanced biofuel facilities no longer exist or no longer produce any eligible advanced biofuel; or

(7) The Agency determines that the advanced biofuel producer is ineligible for participation.

§§ 4288.122–4288.129 [Reserved]

Payment Provisions

§ 4288.130 Payment applications.

Sections 4288.130 through 4288.189 identify the process and procedures the Agency will use to make payments to eligible advanced biofuel producers. In order to receive payments under this

Program, eligible advanced biofuel producers with valid contracts must submit a payment application, as required under paragraph (a) of this section. The Agency will review the payment application and, if necessary, may request additional information, as specified under paragraph (b) of this section.

(a) *Applying for payment.* To apply for payments under this subpart for a fiscal year, an eligible advanced biofuel producer must:

(1) After a quarter has been completed, submit a payment application covering the quarter;

(2) Certify that the request is accurate;

(3) Furnish the Agency such certification, and access to such records, as the Agency considers necessary to verify compliance with Program provisions; and

(4) Provide documentation as requested by the Agency of the net production of advanced biofuel at all advanced biofuel facilities during the relevant quarter.

(b) *Review of payment applications.* The Agency will review each payment application it receives to determine if it is eligible for payment.

(1) *Review factors.* Factors that the Agency will consider in reviewing payments applications include, but are not necessarily limited to:

(i) *Contract validity.* Whether the entity submitting the payment application has a valid contract with the Agency under this Program;

(ii) *Biofuel eligibility.* Whether the biofuel for which payment is sought is an eligible advanced biofuel; and

(iii) *Calculations.* Whether the calculations for determining the requested payment are complete and accurate.

(2) *Additional documentation.* If the Agency determines additional information is required for the Agency to complete its review of a payment application, eligible advanced biofuel producers shall submit such additional supporting documentation as requested by the Agency. If the producer does not provide the requested information within the required time period, the Agency will not make payment.

(c) *Payment application eligibility.* The Agency will notify the advanced biofuel producer, in writing, as soon as practicable after the payment application, whenever the Agency determines that a payment application, or any portion thereof, is ineligible for payment and the basis for the Agency's determination of ineligibility.

(d) *Submittal information.* Eligible advanced biofuel producers must submit payment applications as specified in the annual **Federal Register** notice for this program no later than 4:30 p.m. local time on the last day of the calendar month following the quarter for which payment is being requested. Neither complete nor incomplete payment applications received after this date and time will be considered, regardless of the postmark on the application.

(1) Any payment application form that is received by the Agency after October 31 of the calendar year for the preceding fiscal year is ineligible for payment.

(2) If the actual deadline falls on a weekend or a Federally-observed holiday, the deadline is the next Federal business day.

§ 4288.131 Payment provisions.

Payments to advanced biofuel producers for eligible advanced biofuel production will be determined in accordance with the provisions of this section.

(a) *Types of payments.* The Agency will make available each fiscal year an actual production payment and an incremental production payment to participating producers, as specified in paragraphs (a)(1) and (a)(2), respectively, of this section. As provided in paragraph (a)(2) of this section, not all participating producers will receive an incremental production payment.

(1) *Actual production.* Participating producers will be paid on a quarterly basis for the actual quantity of eligible advanced biofuel produced during the quarter. Payment for actual production will be determined according to paragraph (c) of this section.

(2) *Incremental production.* For each participating advanced biofuel facility, the Agency will make an end-of-the-year payment for that facility's incremental production, if any, during the fiscal year provided the advanced biofuel facility has fewer than 20 days (excluding weekends) of non-production of eligible advanced biofuels during the previous fiscal year. Payment for incremental production will be determined according to paragraph (d) of this section.

(b) *Amount of payment funds available.* Based on the amount of funds made available to this program each fiscal year, the Agency will allocate available program funds according to paragraphs (b)(1) and (b)(2) of this section.

(1) *Actual versus incremental production.* The Agency will determine the amount of funds for actual production payments and for incremental production payment as follows:

(i) For fiscal year 2010, 80 percent of the funds will be allocated for actual production payments and 20 percent of the funds will be allocated for incremental production payments.

(ii) For fiscal year 2011, 70 percent of the funds will be allocated for actual production payments and 30 percent of the funds will be allocated for incremental production payments.

(iii) For fiscal year 2012, 60 percent of the funds will be allocated for actual production payments and 40 percent of the funds will be allocated for incremental production payments.

(iv) For fiscal year 2013 and beyond, 50 percent of the funds will be allocated for actual production payments and 50 percent of the funds will be allocated for incremental production payments.

(2) *Quarterly allocations.* For each fiscal year, the Agency will allocate in each quarter one-fourth of the funds allocated to actual production for the entire fiscal year.

(c) *Determination of payment for actual production.* Each quarter, the Agency will establish an actual production payment rate using the procedures specified in paragraphs (c)(1) through (c)(5) of this section. This rate will be applied to the actual quantity of eligible advanced biofuel produced to determine payments to eligible advanced biofuel producers, as described in paragraph (c)(6) of this section.

(1) Based on the information provided in each payment application, the Agency will determine the eligible advanced biofuel production. If the Agency determines that the amount of advanced biofuel production reported in a payment application is not supported by the documentation submitted with the payment application, the Agency may reduce the production reported in the payment application.

(2) For each producer, the Agency will convert the production determined to be eligible under paragraph (c)(1) of this section into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (or successor organization). If the Energy Information Administration does not publish such conversion factor for a specific type of advanced biofuel, the Agency will use a conversion factor developed by another appropriate entity. If no such conversion factor exists, the Agency will, in consultation with other Federal agencies, establish and use a conversion formula as appropriate, that it publishes in the **Federal Register**, until such time as the Energy Information

Administration or other appropriate entity publishes a conversion factor for said advanced biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(i) If the advanced biofuel is a liquid or gaseous advanced biofuel produced from forest biomass, the BTUs will be discounted 10 percent.

(ii) If the advanced biofuel is a solid advanced biofuel produced from forest biomass, the BTUs will be discounted 85 percent.

(iii) If the advanced biofuel meets an applicable renewable fuel standard, the BTUs will be increased by 10 percent.

(3) For each quarter, the Agency will determine the actual production payment rate ($/BTU) based on paragraphs (b) and (c)(2) of this section. The rate will be calculated such that all of the quarterly funds for actual production will be distributed.

(4) Using the actual production payment rate determined above and the actual production for each type of advanced biofuel produced at an advanced biofuel facility, the Agency will calculate each quarter a payment for each eligible advanced biofuel producer for that quarter.

(d) *Determination of payment for incremental production.* At the end of each fiscal year, the Agency will establish incremental production payment rate using the procedures specified in paragraphs (d)(1) through (d)(6) of this section. This rate will be applied to the quantity of eligible incremental advanced biofuel produced to determine payments to eligible advanced biofuel producers, as described in paragraph (d)(7) of this section.

(1) For each participating advanced biofuel facility that produced eligible advanced biofuels during the fiscal year prior to the fiscal year for which payment is sought provided the advanced biofuel facility has fewer than 20 days (excluding weekends) of non-production of eligible advanced biofuels during that previous fiscal year, the Agency will determine the quantity of eligible advanced biofuel produced in that prior fiscal year based on information provided by the producer.

(2) Using the information in the payment applications submitted for the fiscal year for which payment is sought, the Agency will determine the actual amount of eligible advanced biofuel produced in the fiscal year for which payment is sought.

(3) Using the results from paragraphs (d)(1) and (d)(2) of this section, the Agency will determine the quantity of advanced biofuel produced in excess of the previous year's advanced biofuel production.

(4) For each advanced biofuel facility that shows incremental production under paragraph (d)(3) of this section, the Agency will convert the production into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (or successor organization). If the Energy Information Administration does not publish such conversion factor for a specific type of advanced biofuel, the Agency will use a conversion factor developed by another appropriate entity. If no such conversion factor exists, the Agency will establish and use a conversion formula as appropriate, that it publishes in the **Federal Register**, until such time as the Energy Information Administration or other appropriate entity publishes a conversion factor for said advanced biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(i) If the advanced biofuel is a liquid or gaseous advanced biofuel produced from forest biomass, the BTUs will be discounted 10 percent.

(ii) If the advanced biofuel is a solid advanced biofuel produced from forest biomass, the BTUs will be discounted 85 percent.

(iii) If the advanced biofuel meets an applicable renewable fuel standard, the BTUs will be increased by 10 percent.

(5) The Agency will sum all of the BTUs determined under paragraph (d)(4) of this section.

(6) Using the results from paragraph (d)(5) of this section and the amount of incremental funds available, the Agency will determine the incremental production payment rate ($/BTU). The rate will be calculated such that all of the incremental production funds will be distributed.

(7) Using the incremental production payment rate determined above and the incremental production for each advanced biofuel facility eligible for an incremental production payment, the Agency will calculate an incremental production payment for each eligible advanced biofuel producer.

(e) *Other payment provisions.* The following provisions apply.

(1) Notwithstanding any other provision, the Agency will provide payments to larger producers of not more than 5 percent of available program funds in any fiscal year. At any time during the year, if the limit on payments to larger producers would be reached, the Agency will pro-rate payments to larger producers based on the BTU content of their eligible advanced biofuel production so as not to exceed the limit.

(2) Notwithstanding any other provision, the Agency will provide payments to solid eligible advanced biofuels produced from forest biomass of not more than 5 percent of available program funds in any fiscal year. At any time during the year, if the limit on payments to such advanced biofuels would be reached, the Agency will pro-rate payments for such advanced biofuels based on the BTU content of the quantity of such advanced biofuels produced so as not to exceed the limit.

(3) Advanced biofuel producers will be paid on the basis of the amount of eligible renewable energy content of the advanced biofuels only if the producer provides documentation sufficient, including a Certificate of Analysis, for the Agency to determine the eligible renewable energy content for which payment is being requested, and quantity produced through such documentation as, but not limited to, records of sale and calibrated flow meter records.

(4) Payment will be made to only one eligible advanced biofuel producer per advanced biofuel facility.

(5) Subject to other provisions of this section, advanced biofuel producers shall be paid any sum due subject to the requirements and refund provisions of this subpart.

(6) Advanced biofuels produced under the situations identified in paragraphs (e)(6)(i) through (e)(6)(iii) of this section are ineligible for incremental production payment, but are still eligible for actual production payment.

(i) Advanced biofuels produced at an advanced biofuel facility that did not produce any eligible advanced biofuel in year prior to the fiscal year in which payment is sought (*e.g.,* a new advanced biofuel facility).

(ii) Advanced biofuels produced at an advanced biofuel facility that had 20 or more days (excluding weekends) of non-production of eligible advanced biofuels during the fiscal year immediately prior to the fiscal year in which payment is sought.

(iii) Advanced biofuels produced from forest biomass.

(iv) For larger producers only, when all of the funds available to larger producers have been distributed based on actual production.

(7) If an advanced biofuel producer transfers any production capacity for one advanced biofuel facility to another, such transferred production capacity shall be considered production for the advanced biofuel facility to which the production was transferred.

(8) A producer will only be paid for the advanced biofuels identified in the enrollment application submitted during the sign-up period and which are actually produced during the fiscal year. If the producer starts producing a new advanced biofuel or changes the type of advanced biofuel during the fiscal year, the producer will not receive any payments for those new advanced biofuels. However, during each sign-up period, a producer can identify new advanced biofuels and production levels compared to the previous year.

(9) When determining the quantity of eligible advanced biofuel, if an applicant is blending its advanced biofuel using ineligible feedstocks (*e.g.,* fossil gasoline or methanol, corn kernel starch), only the quantity of advanced biofuel being produced from eligible feedstocks will be used in determining the payment rates and for which payments will be made.

§ 4288.132 Payment adjustments.

The Agency will adjust the payments otherwise payable to the advanced biofuel producer if there is a difference between the amount actually produced and the amount determined by the Agency to be eligible for payment.

§ 4288.133 Payment liability.

Any payment, or portion thereof, made under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the advanced biofuel, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government.

§ 4288.134 Refunds and interest payments.

An eligible advanced biofuel producer who receives payments under this subpart may be required to refund such payments as specified in this section. If the Agency suspects fraudulent representation through its site visits and records inspections under § 4288.105(b), it will be referred to the Office of Inspector General for appropriate action.

(a) An eligible advanced biofuel producer receiving payments under this subpart shall become ineligible if the Agency determines the advanced biofuel producer has:

(1) Made any fraudulent representation; or

(2) Misrepresented any material fact affecting a Program determination.

(b) If an Agency determination that a producer is not eligible for participation under this subpart is appealed and overturned, the Agency will make appropriate and applicable payments to the producer from Program funds, to the extent such funds are available, that remain from the fiscal year in which the original adverse Agency decision was made.

(c) All payments made to an entity determined by the Agency to be ineligible shall be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs as determined appropriate under 31 CFR 901.9.

(d) When a refund is due, it shall be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the producer, and referral to the Department of Justice.

(e) Late payment interest shall be assessed on each refund in accordance with the provisions and rates as established by the United States Treasury.

(1) Interest charged by the Agency under this subpart shall be established by the United States Treasury. Such interest shall accrue from the date such payments were made by the Agency to the date of repayment by the producer.

(2) The Agency may waive the accrual of interest or damages if the Agency determines that the cause of the erroneous payment was not due to any action of the advanced biofuel producer.

(f) Any advanced biofuel producer or person engaged in an act prohibited by this section and any advanced biofuel producer or person receiving payment under this subpart shall be jointly and severally liable for any refund due under this subpart and for related charges.

§ 4288.135 Unauthorized payments and offsets.

When unauthorized assistance has been made to an advanced biofuel producer under this Program, the Agency reserves the right to collect from the recipient the sum that is determined to be unauthorized. If the recipient fails to pay the Agency the unauthorized assistance plus other sums due under this section, the Agency reserves the right to offset that amount against Program payments.

(a) *Unauthorized assistance.* The Agency will seek to collect from recipients all unauthorized assistance made under this Program using the procedures specified in paragraphs (a)(1) through (a)(4) of this section.

(1) *Notification to the producer.* Upon determination that unauthorized assistance has been made to an advanced biofuel producer under this Program, the Agency will send a demand letter to the producer. Unless the Agency modifies the original demand, it will remain in full force and effect. The demand letter will:

(i) Specify the amount of unauthorized assistance, including any accrued interest to be repaid, and the standards for imposing accrued interest;

(ii) State the amount of penalties and administrative costs to be paid, the standards for imposing them and the date on which they will begin to accrue;

(iii) Provide detailed reason(s) why the assistance was determined to be unauthorized;

(iv) State the amount is immediately due and payable to the Agency;

(v) Describe the rights the producer has for seeking review or appeal of the Agency's determination pursuant to 7 CFR part 11;

(vi) Describe the Agency's available remedies regarding enforced collection, including referral of debt delinquent after due process for Federal salary, benefit and tax offset under the Department of Treasury Offset Program; and

(vii) Provide an opportunity for the producer to meet with the Agency and to provide to the Agency facts, figures, written records, or other information that might refute the Agency's determination.

(A) If the producer meets with the Agency, the producer will be given an opportunity to provide information to refute the Agency's findings.

(B) When requested by the producer, the Agency may grant additional time for the producer to assemble documentation. Such extension of time for payment will be valid only if the Agency documents the extension in writing and specifies the period in days during which period the payment obligation created by the demand letter (but not the ongoing accrual of interest) will be suspended. Interest and other charges will continue to accrue pursuant to the initial demand letter during any extension period unless the terms of the demand letter are modified in writing by the Agency.

(2) *Payment in full.* If the producer agrees with the Agency's determination or will pay the amount in question, the Agency may allow a reasonable period of time (usually not to exceed 90 days) for the producer to arrange for repayment. The amount due will be the unauthorized payments made plus interest accrued beginning on the date of the demand letter at the interest rate stipulated until the date paid unless otherwise agreed, in writing, by the Agency.

(3) *Promissory note.* If the producer agrees with the Agency's determination

or is willing to pay the amount in question, but cannot repay the unauthorized assistance within a reasonable period of time, the Agency will convert the unauthorized assistance amount to a loan provided all of the conditions specified in paragraphs (a)(3)(i) through (a)(3)(iii) of this section are met. Loans established under this paragraph will be at the Treasury interest rate in effect on the date the financial assistance was provided and that is consistent with the term length of the promissory note. In all cases, the receivable will be amortized per a repayment schedule satisfactory to the Agency that has the producer pay the unauthorized assistance as quickly as possible, but in no event will the amortization period exceed fifteen (15) years. The producer will be required to execute a debt instrument to evidence this receivable, and the best security position practicable in a manner that will adequately protect the Agency's interest during the repayment period will be taken as security.

(i) The producer did not provide false information;

(ii) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(iii) Failure to collect the unauthorized assistance immediately will not adversely affect the Agency's interests.

(4) *Appeals.* Appeals resulting from the demand letter prescribed in paragraph (a)(1) of this section will be handled according to the provisions of § 4288.103. All appeal provisions will be concluded before proceeding with further actions.

(b) *Offsets.* Failure to make payment as determined under paragraph (a) of this section will be treated by the Agency as a debt that can be collected by an Administrative offset, unless written agreements to repay such debt as an alternative to administrative offset is agreed to between the Agency and the producer.

(1) Any debtor who wishes to reach a written agreement to repay the debt as an alternative to administrative offset must submit a written proposal for repayment of the debt, which must be received by the Agency within 20 calendar days of the date the notice was delivered to the debtor. In response, the Agency will notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the Agency will balance the Government's interest in collecting the debt against fairness to the debtor.

(2) When the Agency receives a debtor's proposal for a repayment agreement, the offset is stayed until the debtor is notified as to whether the initial agreement is acceptable. If a Government payment will be made before the end of the fiscal year and the review is not yet completed, payment will be deferred pending resolution of the review.

§ 4288.136 Remedies.

In addition to the steps available under the provisions of §§ 4288.134 and 4288.135, if the Agency has determined that a producer has misrepresented the information or defrauded the Government, the Agency will take one of the following steps in accordance to 7 CFR part 3017, Government-wide Debarment and Suspension:

(a) Suspend payments on the Contract until the violation has been reconciled;

(b) Terminate the Contract; or

(c) Debarment to participate in any Federal Government program.

§ 4288.137 Succession and loss of control of advanced biofuel facilities and production.

(a) *Contract succession.* An entity who becomes the eligible advanced biofuel producer for an advanced biofuel facility that is under contract under this subpart must request permission from the Agency to succeed to the Program contract and the Agency may grant such request if it is determined that the entity is an eligible producer and permitting such succession would serve the purposes of the Program. If appropriate, the Agency may require the consent of the previous eligible advanced biofuel producer to such succession.

(b) *Loss of control.* Payments will be made only for eligible advanced biofuels produced at an advanced biofuel facility owned or controlled by an eligible advanced biofuel producer with a valid contract. If payments are made to an advanced biofuel producer for production at an advanced biofuel facility no longer owned or controlled by said producer or to an otherwise ineligible advanced biofuel producer, the Agency will demand full refund of all such payments.

§§ 4288.138–4288.189 [Reserved]

Fiscal Year 2010 Applications

§ 4288.190 Fiscal Year 2010 applications.

(a) *General.* This section provides the requirements associated with applying for funds under this subpart for Fiscal Year 2010.

(b) *Applicability.* The provisions specified in §§ 4288.101 through 4288.137 are applicable to applicants, applications, and awards made for Fiscal Year 2010, except as follows:

(1) Applications for participation in this program must be received by April 12, 2011. Applications received after this date will not be considered by the Agency for Fiscal Year 2010 funding.

(2) Payment applications for Fiscal Year 2010 funding are due by 4:30 p.m. local time May 12, 2011. Any application received after this date and time is ineligible for payment.

(3) Payment applications for Fiscal Year 2010 funding must contain actual production for October 1, 2009 through September 30, 2010.

(4) If an applicant has submitted an application for participation or payment in this program for Fiscal Year 2010 funding prior to March 14, 2011, the applicant must submit new applications in accordance with this subpart for Fiscal Year 2010 funding.

§§ 4288.191–4288.200 [Reserved]

Dated: January 31, 2011.

Dallas Tonsager,

Under Secretary, Rural Development.

[FR Doc. 2011–2476 Filed 2–10–11; 8:45 am]

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Part IV

Commodity Futures Trading Commission

17 CFR Parts 4, 145, and 147
Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 4, 145, and 147

RIN 3038–AD30

Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission is proposing to amend its existing regulations and proposing one new regulation regarding Commodity Pool Operators and Commodity Trading Advisors. The Commission is proposing a new data collection for CPOs and CTAs that is consistent with the data collection required under the Dodd-Frank Act. The proposed amendments would: Rescind the exemptions from registration provided in the Commission's regulations; rescind the relief from the certification requirement for annual reports provided to operators of certain pools only offered to qualified eligible persons ("QEPs"); modify the criteria for claiming relief under the Commission's regulations; and require the annual filing of notices claiming exemptive relief. Finally, the proposal includes new risk disclosure requirements for CPOs and CTAs regarding swap transactions.

DATES: Comments must be in writing and received on or before April 12, 2011.

ADDRESSES: You may submit comments, identified by RIN number 3033–AD30, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

Please specify the regulation(s) to which your comment refers in the subject field of comments submitted by e-mail, and otherwise clearly indicate the regulation(s) on written submissions. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedure established in 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, including, but not limited to, obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed amendments to existing §§ 4.5, 4.7, 4.13, 4.14, 4.24, 4.34, or 145.5, contact Kevin P. Walek, Assistant Director, Telephone: (202) 418–5463, E-mail: *kwalek@cftc.gov,* or Amanda Lesher Olear, Special Counsel, Telephone: (202) 418–5283, E-mail: *aolear@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

For further information about proposed § 4.27 or proposed Forms CPO–PQR or CTA–PR, contact Kevin P. Walek, Assistant Director, Telephone: (202) 418–5463, E-mail: *kwalek@cftc.gov,* or Daniel Konar, Attorney-Advisor, Telephone: (202) 418–5405. E-mail: *dkonar@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[1] The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, inter alia, enhancing the Commodity Futures Trading Commission's (the "Commission" or "CFTC") rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

The preamble of the Dodd-Frank Act explicitly states that the purpose of the legislation is:

> To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.[2]

Pursuant to this stated objective, the Dodd-Frank Act has expanded the scope of Federal financial regulation to include instruments such as swaps, enhanced the rulemaking authorities of existing Federal financial regulatory agencies including the Commission and the Securities and Exchange Commission ("SEC"), and created new financial regulatory entities.

The Commodity Exchange Act ("CEA") [3] empowers the Commission with the authority to register Commodity Pool Operators ("CPOs") and Commodity Trading Advisors ("CTAs"),[4] exclude any entity from registration as a CPO or CTA,[5] and to require "[e]very commodity trading advisor and commodity pool operator registered under [the CEA to] maintain books and records and file such reports in such form and manner as may be prescribed by the Commission."[6] The Commission also has the power to "make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate the provisions or to accomplish any of the purposes of [the CEA]."[7] The Commission's discretionary power to exclude or exempt persons from registration was intended to be exercised "to exempt from registration those persons who otherwise meet the criteria for registration * * * if, in the opinion of

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[2] *Id.*

[3] 7 U.S.C. 1, *et seq.*

[4] 7 U.S.C. 6m.

[5] 7 U.S.C. 1a(11) and 1a(12).

[6] 7 U.S.C. 6n(3)(A). Under part 4 of the Commission's regulations, entities registered as CPOs have reporting obligations with respect to their operated pools. *See* 17 CFR 4.22. Although CTAs have recordkeeping obligations under part 4, the Commission has not required reporting by CTAs, *See generally,* 17 CFR part 4.

[7] 7 U.S.C. 12a(5).

the Commission, there is no substantial public interest to be served by the registration."[8] It is pursuant to this authority that the Commission has promulgated the various exemptions from registration as a CPO that are enumerated in § 4.13 of its regulations as well as the exclusions from the definition of CPO that are delineated in § 4.5.

Following the recent economic turmoil, and consistent with the tenor of the provisions of the Dodd-Frank Act, the Commission has reconsidered the level of regulation that it believes is appropriate with respect to entities participating in the commodity futures and derivatives markets. The Commission believes that it is necessary to rescind or modify several of its exemptions and exclusions to more effectively oversee its market participants and manage the risks that such participants pose to the markets. Additionally, the Commission has re-evaluated its prior decision not to require reporting by CTAs and has concluded that additional information regarding CTAs' activities is needed to provide the Commission with a more complete understanding of such activities' effects on commodities and derivatives markets.

In addition to the expansion of the Commission's jurisdiction to include swaps under Title VII of the Dodd-Frank Act, Title I of the Dodd-Frank Act created the Financial Stability Oversight Council ("FSOC").[9] The FSOC is composed of the leaders of various State and Federal financial regulators and is charged with identifying risks to the financial stability of the United States, promoting market discipline, and responding to emerging threats to the stability of the county's financial system.[10] The Dodd-Frank Act anticipates that the FSOC will be supported in these responsibilities by the Federal financial regulatory agencies.[11] The Commission is among those agencies that could be asked to provide information necessary for the FSOC to perform its statutorily mandated duties.[12]

Consistent with the Commission's view regarding the appropriate level of regulation for its registrants in light of the recent economic turmoil and the current regulatory environment, and in anticipation of any requests for information from the FSOC, the Commission is performing two tasks. First, the Commission is working with the SEC to jointly promulgate the rules and forms needed to gather the data required under section 406 of Title IV of the Dodd-Frank Act.[13] Second, the Commission is re-evaluating its regulation of CPOs and CTAs to ensure that its regulatory structure is appropriately designed to effectuate its views regarding the necessary level of regulation in the current economic environment and to be responsive to any informational requests made to the Commission by other governmental agencies or FSOC.

A. Title IV of the Dodd-Frank Act

Title IV of the Dodd-Frank Act requires advisers to large private funds[14] to register with the SEC.[15] Through this registration requirement, Congress sought to make available to the SEC "information regarding [the] size, strategies and positions" of large private funds, which Congress believed "could be crucial to regulatory attempts to deal with a future crisis."[16] In section 404 of the Dodd-Frank Act, Congress amended section 204(b) of the Investment Advisers Act to direct the SEC to require private fund advisers registered solely with the SEC[17] to file reports containing such information as is deemed necessary and appropriate in the public interest and for investor protection or for the assessment of systemic risk. These reports and records must include a description of certain prescribed information, such as the amount of assets under management, use of leverage, counterparty credit risk exposure, and trading and investment positions for each private fund advised by the adviser.[18] Section 406 of the Dodd-Frank Act also requires that the rules establishing the form and content of reports filed by private fund advisers that are dually registered with the SEC and the CFTC be issued jointly by both agencies after consultation with the FSOC.[19]

To fulfill this statutory mandate, the Commission and the SEC today are jointly proposing sections 1 and 2 of Form PF in a forthcoming proposal. Additionally, to ensure that necessary data is collected from CPOs and CTAs that are not operators or advisors of private funds, the Commission is proposing a new § 4.27, which would require quarterly reports from all CPOs and CTAs to be electronically filed with NFA. The Commission is promulgating proposed § 4.27 pursuant to the Commission's authority to require the filing of reports by registered CPOs and CTAs under section 4n of the CEA.[20] In an effort to eliminate duplicative filings, proposed § 4.27(d) would allow certain CPOs and/or CTAs that are also registered as private fund advisers with the SEC pursuant to the securities laws to satisfy certain of the Commission's systemic reporting requirements by completing and filing the appropriate sections of Form PF with the SEC with respect to advised private funds.

B. Reason for Amending Existing CPO and CTA Regulations

In order to ensure that the Commission can adequately oversee the commodities and derivatives markets and assess market risk associated with pooled investment vehicles under its jurisdiction, the Commission is re-

[8] *See* H.R. Rep. No. 93–975, 93d Cong., 2d Sess. (1974), p. 20.

[9] *See* section 111 of the Dodd-Frank Act.

[10] *See* section 112(a)(1)(A) of the Dodd-Frank Act.

[11] *See* sections 112(a)(2)(A) and 112(d)(1) of the Dodd-Frank Act.

[12] *See* section 112(d)(1) of the Dodd-Frank Act.

[13] The Commission and the SEC are jointly proposing Form PF with respect to entities registered with both agencies in a forthcoming release.

[14] Section 202(a)(29) of the Investment Advisers Act of 1940 ("Investment Advisers Act") defines the term "private fund" as "an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act." 15 U.S.C. 80a–3(c)(1), 80a–3(c)(7). Section 3(c)(1) of the Investment Company Act provides an exclusion from the definition of "investment company" for any "issuer whose outstanding securities (other than short term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities." 15 U.S.C. 80a–3(c)(1). Section 3(c)(7) of the Investment Company Act provides an exclusion from the definition of "investment company" for any "issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities." 15 U.S.C. 80a–3(c)(7). The term "qualified purchaser" is defined in section 2(a)(51) of the Investment Company Act. *See* 15 U.S.C. 80a–2(a)(51).

[15] The Dodd-Frank Act requires private fund adviser registration by amending section 203(b)(3) of the Advisers Act to repeal the exemption from registration for any adviser that during the course of the preceding 12 months had fewer than 15 clients and neither held itself out to the public as an investment adviser nor advised any registered investment company or business development company. *See* section 403 of the Dodd-Frank Act. There are exemptions from this registration requirement for advisers to venture capital funds and advisers to private funds with less than $150 million in assets under management in the United States. There also is an exemption for foreign advisers with less than $25 million in assets under management from the United States and fewer than 15 U.S. clients and private fund investors. *See* sections 402, 407 and 408 of the Dodd-Frank Act.

[16] *See* S. Conf. Rep. No. 111–176, at 38 (2010).

[17] In this release, the term "private fund adviser" means any investment adviser that is (i) registered or required to be registered with the SEC (including any investment adviser that is also registered or required to be registered with the CFTC as a CPO or CTA) and (ii) advises one or more private funds (including any commodity pools that satisfy the definition of "private fund").

[18] *See* section 404 of the Dodd-Frank Act.

[19] *See* section 406 of the Dodd-Frank Act.

[20] 7 U.S.C. 6n(3)(A).

evaluating its regulation of CPOs and CTAs. Additionally, the Commission does not want its registration and reporting regime for pooled investment vehicles and their operators and/or advisors to be incongruent with the registration and reporting regimes of other regulators, such as that of the SEC for investment advisers under the Dodd-Frank Act.

Ultimately, the Commission has determined that to address these concerns it will be necessary to amend certain sections of its existing regulations. These proposed amendments are designed to (1) bring the Commission's CPO and CTA regulatory structure into alignment with the stated purposes of the Dodd-Frank Act; (2) encourage more congruent and consistent regulation of similarly-situated entities among Federal financial regulatory agencies; (3) improve accountability and increase transparency of the activities of CPOs, CTAs, and the commodity pools that they operate or advise, and (4) facilitate a collection of data that will assist the FSOC, acting within the scope of its jurisdiction, in the event that the FSOC requests and the Commission provides such data. Additionally, these proposed amendments will have the added benefit of enabling the Commission to more efficiently deploy its regulatory resources and to more expeditiously take necessary action to ensure the stability of the commodities and derivatives markets, thereby promoting the stability of the financial markets as a whole. The existing regulations that the Commission proposes to amend are enumerated below.

II. The Proposals

The Commission's proposed amendments are designed to (1) bring the Commission's CPO and CTA regulatory structure into alignment with the stated purposes of the Dodd-Frank Act; (2) encourage more congruent and consistent regulation of similarly situated entities among Federal financial regulatory agencies; (3) improve accountability and increase transparency of the activities of CPOs, CTAs, and the commodity pools that they operate or advise; and (4) facilitate a collection of data that will assist the FSOC, acting within the scope of its jurisdiction, in the event that the FSOC requests and the Commission provides such data. The proposed amendments will also allow the Commission to more effectively oversee its market participants and manage the risks posed by the commodities and derivatives markets. To those ends, the amendments: (A) Require the periodic reporting of data by CPOs and CTAs regarding their direction of commodity pool assets; (B) identify certain proposed filings with the Commission as being afforded confidential treatment; (C) revise the requirements for determining which persons should be required to register as a CPO under § 4.5; (D) require the filing of certified annual reports by all registered CPOs; (E) rescind the exemptions from registration under §§ 4.13(a)(3) and (a)(4); (F) require periodic affirmation of claimed exemptive relief for both CPOs and CTAs; (G) require an additional risk disclosure statement from CPOs and CTAs that engage in swaps transactions; and (H) make certain conforming amendments to the Commission's regulations as described below in subsection (H) of this preamble. In addition, the proposed amendments make conforming changes to the Commission's regulations in light of certain provisions in the Dodd-Frank Act, including updating the accredited investor definition, which the Commission has incorporated into the definition of QEP in § 4.7.

The Commission requests comment on all aspects of the proposal, as well as comment on the specific provisions and issues highlighted in the discussion below.

A. Proposed New § 4.27 and Appendices A and C: Data Collection for CPOs and CTAs

1. General Purpose of Forms CPO–PQR and CTA–PR

Section 4n of the CEA empowers the Commission to require all registered CPOs and CTAs to file such reports as the Commission deems necessary.[21] Following the recent economic turmoil, and consistent with the tenor of the provisions of the Dodd-Frank Act, the Commission has determined that the reports currently required of Commission registrants do not provide sufficient information regarding their activities for the Commission to effectively monitor the risks posed by those participants to the commodity futures and derivatives markets. Moreover, the Commission has re-evaluated its prior decision not to require reporting by CTAs and has concluded that additional information regarding CTAs' activities is needed to provide it with a more complete understanding of such activities.

Therefore, the Commission is proposing Forms CPO–PQR (proposed to appear in the Commission's regulations as appendix A to part 4), and CTA–PR (proposed to appear in the Commission's regulations as appendix C to part 4) to collect information from CPOs and CTAs that are solely registered with the Commission to permit the Commission to more effectively oversee participants acting within its jurisdiction. The information that the Commission currently receives is limited, not designed to measure systemic or market risk in any meaningful way, and is only submitted by registered CPOs on an annual basis. In addition, the annual financial reports filed by CPOs do not disclose information regarding CPOs' use of stress testing or the tenor of fixed income assets held by commodity pools.

The Commission proposes Forms CPO–PQR and CTA–PR to solicit information that is generally identical to that sought through Form PF, which is being jointly promulgated in a forthcoming release in conjunction with the SEC. These forms were developed in consultation with other financial regulators tasked with overseeing the financial integrity of the economy. Through the collection of the data delineated in proposed Forms CPO–PQR and CTA–PR, the Commission will be able, if requested, by other financial regulators or FSOC, to provide them with the information needed to identify whether any commodity pools are systemically relevant and, as a result, warrant additional examination or scrutiny.

The amount of information that a CPO or CTA will be required to disclose on proposed Forms CPO–PQR and CTA–PR will vary depending on both the size of the operator or advisor and the size of the advised pools. This tiered approach to disclosure acknowledges the fact that smaller operators, advisors, and pools are less likely to present significant risk to the stability of the commodities futures and derivatives markets and the financial market as a whole, and therefore, such entities should have a lesser compliance burden. As detailed infra, the Commission is proposing to collect more detailed information from operators and advisors managing a large amount of commodity pool assets.

2. Persons Required To Report on Proposed Forms CPO–PQR and CTA–PR

Pursuant to proposed § 4.27, any CPO or CTA that is registered or required to be registered must complete and submit proposed Forms CPO–PQR and CTA–PR, respectively, with NFA as the Commission's delegatee.[22] As discussed

[21] 17 U.S.C. 6n(3)(A).

[22] In a forthcoming release, the Commission and the SEC will be jointly promulgating Form PF with respect to the advisers to private funds that are

infra, only certain large CPOs and CTAs would have to complete the sections of Forms CPO–PQR and CTA–PR that require the most detailed information. It is expected that most CPOs would only have to complete schedule A of form CPO–PQR, which contains essentially the same information that NFA currently collects through form PQR. In addition, the Commission expects that most CTAs only would have to complete schedule A of form CTA–PR, which consists of limited questions regarding self-identification, general operations of the CTA, and whether the CTA directs assets for commodity pools equal to or exceeding $150 million.

Those CPOs with assets under management equal to or greater than $150 million would be required to complete schedule B of form CPO–PQR, which solicits basic information regarding the commodity pools operated by such CPOs. CPOs with assets under management equal to or greater than $1 billion would be required to complete schedule C of form CPO–PQR, which solicits aggregate information regarding the commodity pools operated by such CPOs and commodity pools with a net asset value exceeding $500 million. Similarly, a CTA with commodity pool assets under management equal to or exceeding $150 million would be required to complete schedule B of form CTA–PR, which solicits basic information regarding the CTA's trading program, the identification of the CTA's client pool(s), and the position data of each commodity pool advised by the CTA.

The Commission estimates that the number of CPOs that would have to file schedule C of form CPO–PQR will be relatively small. The Commission believes that it is appropriate to limit the more extensive reporting obligations to the large entities detailed above because it would provide information about those entities that are most likely to pose market and systemic risk, and it minimizes the burden on smaller registrants that are less likely to pose such risk.

The Commission requests comment on the proposed reporting scheme. Should the Commission require that all CPOs and CTAs registered or required to be registered with the Commission complete all of the information on their respective forms regarding the pools that they operate or advise? Please provide detail supporting your position. Are there more appropriate thresholds for determining which CPOs and CTAs must report more extensive information? Should the assets under management thresholds be lower or higher? Is there additional information that should be requested?

3. Frequency of Reporting

The Commission proposes to require the completion and filing of the required section(s) of forms CPO–PQR and CTA–PR on a quarterly basis, with the exception of mid-sized CPOs filing schedule B of form CPO–PQR on an annual basis. The Commission believes that the proposed frequency of reporting would permit the Commission to effectively monitor key information relevant to the assessment of market risk posed by the advisors and operators of commodity pools both on an individual and aggregate basis. The proposal would require CPOs and CTAs to file the appropriate reports within 15 days of each quarter end as set forth in proposed § 4.27. Additionally, proposed form CPO–PQR would require schedule B to be filed by mid-sized CPOs within 90 days of the end of the calendar year. The Commission believes that this periodic reporting for CPOs and CTAs is necessary to provide the Commission with timely data to effectively monitor CPOs' and CTAs' activities and to identify emerging market issues. It is expected that this reporting would coincide with registrants' existing internal reporting and risk assessment system cycles. The various reporting schedules for Commission registrants are set forth in the charts below.

	Form PF and Form ADV	PQR Schedule A	PQR Schedule B	PQR Schedule C
Dual Registrant CPO for Private Funds Only (Assets under Management equal to or exceeding $1 Billion).	Quarterly	Quarterly.		
Dual Registrant CPO for Private Funds Only (Assets under Management less than $1 Billion).	Annually	Quarterly.		
Large CPO—Not Dual	.....	Quarterly	Quarterly	Quarterly.
Mid-size CPO	.....	Quarterly	Annually.	
Small CPOs	.....	Quarterly.		

	Form PF and Form ADV	PR Schedule A	PR Schedule B
Dual Registrant CTA (Assets under Management equal to or exceeding $1 Billion)	Quarterly	Quarterly.	
Dual Registrant CTA (Assets under Management less than $1 Billion)	Annually	Quarterly.	
Large and Mid-size CTAs	.....	Quarterly	Quarterly.
Small CTAs	.....	Quarterly.	

The Commission requests comment on the proposed filing frequency. Is quarterly reporting an appropriate amount of time to gather the information necessary to assess risk posed by filers? Is the 15-day deadline for reports too long to ensure reporting of timely information by filers?

4. Implementation of Reporting Obligation

The Commission currently anticipates that the proposed rules requiring the filing of forms CPO–PQR and CTA–PR would become effective six months after the adoption of the proposed forms, which will allow sufficient time for the registrants to develop any systems necessary to collect the information requested on the forms and prepare them for filing. This effective date will also provide NFA with sufficient time to modify its "EasyFile" system to enable registrants to file the forms through that system.

The Commission has determined to authorize NFA to maintain and serve as official custodian of record for the filings, notice, reports, and claims

registrants with both agencies. CPOs and CTAs that are dual registrants and that operate or advise commodity pools that are not private funds will still be required to file the proposed reports required in this release.

required by § 4.27. This designation is consistent with the Commission's prior designation of NFA as the official custodian of record for the financial information filed as part of the annual reports required under §§ 4.7(b)(3) and 4.22(c).[23] This determination is based upon NFA's representations regarding procedures for maintaining and safeguarding all such records, in connection with NFA's assumption of the responsibilities for the activities referenced herein. In maintaining the Commission's records, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are acceptable to the Commission and as are necessary to: Ensure the security and integrity of the records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of records.[24]

The Commission requests comment as to when proposed § 4.27 should become effective, requiring the filing of forms CPO–PQR and CTA–PR.

5. Information Required on Form CPO–PQR

The questions contained in form CPO–PQR reflect the experience of the Commission in regulating CPOs, in consultation with staff of the FSOC, the SEC, and NFA,[25] as well as the purpose and requirements of the Dodd-Frank Act. The information that the Commission proposes to collect from CPOs is largely identical to that required under form PF for private fund advisers and incorporates the information already being collected by NFA in its form PQR. As stated previously, the Commission expects that the collection of the data required by form CPO–PQR would enhance the Commission's oversight of CPOs. A discussion of the information required by form CPO–PQR follows.

a. Proposed Schedule A

Generally, the information required under proposed schedule A will be substantially similar to that required under form PF. Proposed schedule A would be required of all CPOs that are registered or required to be registered and incorporates all of the information currently required by NFA's PQR data collection instrument. Proposed part 1 of schedule A seeks basic identifying information about the CPO, including its name, NFA identification number, and the CPO's assets under management. Proposed part 2 of schedule A requires the reporting of information regarding each of the CPO's pools, including the names and NFA identification numbers for the pools operated during the reporting period, position information for positions comprising five percent or more of each pool's net asset value, and the pool's key relationships with brokers, other advisors, administrators, *etc.* CPOs that advise multiple pools will be required to complete and file a separate part 2 of schedule A for each pool that they advise.

Proposed part 2 also requires the identification of each operated pool's carrying brokers, administrators, trading managers, custodians, auditors, and marketers. This information would enable the Commission to determine which entities are exposed and connected to commodity pools. The Commission is also proposing to include quarterly and monthly performance information about each pool. This information would permit the Commission to monitor trends regarding the commodity pool industry, such as whether certain funds are engaging in investment strategies that include significant risks having marketwide or even systemic implications. Finally, the Commission is proposing to collect information regarding a pool's subscriptions and redemptions, and any restrictions thereon. The Commission believes that this information is important to ensure adequate oversight of a CPO's decision to restrict pool participants' access to their funds, given the recent economic conditions that gave rise to the imposition of restrictions on redemptions by CPOs.

The Commission is requesting comment on the appropriateness and completeness of the information requested in proposed schedule A of form CPO–PQR. Is there additional basic information that the Commission should require of all CPOs filing form CPO–PQR or regarding the commodity pools that they operate? Is there any information that is included in schedules B and C for larger CPOs that should be included in schedule A for all CPOs? Conversely, is there any information in schedule A that the Commission should not require or that the Commission should only require of large CPOs and, if so, why?

b. Proposed Schedule B

The Commission is proposing that all CPOs that are registered or required to be registered that have assets under management equal to or exceeding $150 million be required to file schedule B of form CPO–PQR. CPOs satisfying the assets under management threshold would be required to report detailed information for all operated pools, including information regarding each pool's investment strategy; borrowings by geographic area and the identities of significant creditors; credit counterparty exposure; and entities through which the pool trades and clears its positions. The Commission believes that this more detailed pool information is necessary from mid-sized and large CPOs as these CPOs and their pools are more likely to be a source of risk to both the commodity futures and derivatives markets and the financial markets as a whole.

The Commission is requesting comment on the appropriateness and completeness of the information proposed to be requested from all CPOs with assets under management equal to or exceeding $150 million. Is there additional information that the Commission should request of mid-sized and large CPOs? Is there information that the Commission should not require to be reported? Should the Commission set a threshold net asset value for pools for which CPOs must report information under proposed schedule B, and if so, what threshold would be appropriate?

c. Proposed Schedule C

The Commission is also proposing that all CPOs with assets under management equal to or exceeding $1 billion be required to file schedule C of proposed form CPO–PQR. Part 1 of schedule C would require certain aggregate information about the commodity pools advised by large CPOs, such as the market value of assets invested, on both a long and short basis, in different types of securities and derivatives, turnover in these categories of financial instruments, and the tenor of fixed income portfolio holdings, including asset-backed securities. This

[23] 67 FR 77470, Dec. 18, 2002.

[24] *Id.*

[25] NFA is currently the only registered futures association under the CEA and is the self regulatory organization overseeing all CPOs and CTAs registered with the Commission. It is also responsible for the administration of the Commission's registration program and exemptions therefrom. *See* the Commission's delegation order regarding the registration of CPOs and CTAs at 49 FR 39593, Oct. 9, 1984. Additionally, NFA currently collects certain data from CPOs that are NFA members on its form PQR under NFA Rule 2–46.

information will assist the Commission in monitoring asset classes in which commodity pools may be significant investors and trends in pools' exposures to allow the Commission to identify concentrations in particular asset classes that are building or transitioning over time. It also would aid the Commission in examining large CPOs' roles as a source of liquidity in different asset classes.

Proposed part 2 of schedule C would require large CPOs to report certain information about any commodity pool that they advise with a net asset value of at least $500 million as of the end of any business day during the reporting period. The Commission has selected $500 million as a threshold for more extensive individual commodity pool reporting because the Commission believes that a pool with $500 million in net asset value is a substantial fund whose activities could have an impact on particular markets in which it invests or on its counterparties. The Commission further believes that setting $500 million as the threshold will lessen the reporting burdens on smaller or start-up pools that are less likely to pose systemic risk. This threshold is the same threshold proposed by the Commission and the SEC in their joint release for form PF.

Proposed part 2 would require information on the individual pool level that is substantially similar to that requested in part 1 of schedule C on an aggregate level. Part 2, however, would also require additional information. The CPO would be required to report a geographic breakdown of the reportable pool's assets as well as information regarding asset liquidity, concentration of positions, material investment positions, collateral practices with significant counterparties, and clearing relationships. This information is designed to assist the Commission in monitoring the composition of commodity pool exposures over time as well as the liquidity of those exposures.[26]

Proposed part 2 of schedule C also proposes to require the reporting of data regarding commodity pool risk metrics, financial information, and investor information. If during the reporting period the CPO regularly calculated a value at risk ("VaR") metric for the reportable pool, the CPO would have to report VaR for each month of the reporting period.[27] Form CPO–PQR would also require the CPO to report the impact on the pool's portfolio when stressing certain identified market factors, if applicable, broken down by the long and short components of the reportable pool's portfolio. It also requires the CPO to note whether it regularly performed stress tests in which that market factor was considered as part of its risk management process.[28] This information is designed to allow the Commission to track basic sensitivities of the commodity pool to common market factors, correlations in those factor sensitivities, and trends in those factor sensitivities among large commodity pools.

Proposed part 2 of schedule C would require a CPO to report certain financing information for its reportable pool, including a monthly breakdown of its secured, unsecured, and synthetic borrowing, as well as information about the collateral supporting the secured and synthetic borrowing and the types of creditors. It also would require certain information about the term of the fund's committed financing. This information would assist the Commission in monitoring the reportable pool's leverage, credit counterparties' unsecured exposure to the pool, and the committed term of that leverage, which the Commission may find important in monitoring if the pool comes under stress.

Finally, proposed part 2 of schedule C would require a CPO to report information about the reportable pool's investor composition and liquidity. For example, proposed part 2 contains questions regarding the pool's use of side pockets and gates, as well as information relating to investor liquidity. The Commission believes this information may be important in enabling the Commission to monitor the commodity pool's susceptibility to failure through investor redemptions in the event that the pool experiences stress due to market risks or other factors.

The Commission requests comment on the information proposed in schedule C for large CPOs. Is there additional information that should be included and, if so, why? Is there information that should be omitted and, if so, why? Is there information that the Commission should require only on an aggregate basis that the Commission is proposing to require CPOs to report on an individual pool basis? Are there additional risk metrics or market factors that the Commission should require CPOs to employ? Should the Commission require the proposed market factors but with different parameters? Is there information currently proposed that would not result in comparable or meaningful information for the Commission? If so, how can changes to the questions or instructions improve the utility of the information? Is there information that should be broken down further and reported as of smaller time increments, such as weekly? Is there information that should be reported to show ranges, high points, or low points during the reporting period, rather than as of the last day of the month or quarter? Should clearing information be collected with respect to pools with a net asset value less than $500 million?

6. Information Required on Proposed Form CTA–PR

The questions contained in proposed form CTA–PR reflect the experience of the Commission in regulating CTAs, its knowledge regarding how pools allocate funds among various CTAs, and the purpose and requirements of the Dodd-Frank Act. The Commission is proposing that all CTAs that direct commodity pool assets would be required to report on form CTA–PR. As stated previously, the Commission expects that the collection of the data required by form CTA–PR would enhance the Commission's oversight of CTAs and its information regarding the role that CTAs play in the investment of pool assets. A discussion of the information required by form CTA–PR follows.

a. Proposed Schedule A

Proposed schedule A of form CTA–PR would collect general information about the CTA and the pool assets under management by that CTA. All CTAs that are registered or required to be registered would be required to file proposed schedule A. Proposed schedule A consists of general information, including: The name of the CTA; the CTA's NFA identification number; the number of offered trading programs and whether any pool assets are directed under those trading programs; the total assets directed by the CTA; and the total pool assets

[26] It is noteworthy that the information in this proposed part 2 also could aid the FSOC, if it so requests such information from the Commission and such request is granted, in monitoring: (1) Credit counterparties' unsecured exposure to commodity pools, as well as the pools' exposure; (2) a CPO's ability to respond to market stresses; and (3) a CPO's interconnectedness with certain central clearing counterparties.

[27] If VaR was calculated, the CPO would have to report the confidence interval, time horizon, whether any weighting was used, and whether VaR was calculated using historical simulation or Monte Carlo simulation. If historical simulation was used, the CPO would have to report the historical lookback period used.

[28] The market factors are changes in: Equity prices; risk-free interest rates; credit spreads; currency rates; commodity prices; implied volatilities; implied correlations; default rates; and prepayment speeds.

directed by the CTA. The Commission believes that this information will assist the Commission in gaining a more complete understanding of CTAs and their relationships with commodity pools without imposing any significant burden on CTAs that do not manage a substantial amount of pool assets. The Commission is proposing that all CTAs be required to file proposed schedule A because the Commission believes that basic information about entities registered as CTAs will assist the Commission in making future determinations regarding their regulatory obligations.

The Commission is seeking comment on the content of proposed schedule A and which entities would be required to report under form CTA–PR. Should all CTAs be required to file proposed schedule A of form CTA–PR? If not, what criteria would be appropriate for limiting which CTAs are required to file proposed schedule A of form CTA–PR?

b. Proposed Schedule B

Under the Commission's proposal, CTAs that direct pool assets equal to or exceeding $150 million would be required to complete and file proposed schedule B with details regarding the CTA's trading program(s). CTAs would be required to file detailed position, performance, and trading strategy information for each trading program. CTAs also would be required to identify the pools advised under each program and the percentage of the pool's assets that are directed by the CTA. Finally, the CTA would be required to disclose whether it uses the services of an administrator. Through analysis of the information collected on form CTA–PR, in conjunction with that collected through form CPO–PQR, the Commission will obtain a more complete understanding of the relationships between CTAs and pools and interconnectedness of the Commission's registrants. This information will also assist the Commission in determining whether there is concentration of pool assets with particular CTAs that could result in market risk.

The Commission is seeking comment on the information proposed to be required under schedule B of form CTA–PR. Is there additional information that should be included and, of so, why? Is there information that should be omitted and, if so, why? Is there information currently proposed that would not result in comparable or meaningful information for the Commission? If so, how can changes to the questions or instructions improve the utility of the information?

B. Amendments to §§ 145.5 and 147.3: Confidential Treatment of Data Collected on Forms CPO–PQR and CTA–PR

1. Proposed Amendments to § 145.5

The Commission's collection of certain proprietary information through proposed forms CPO–PQR and CTA–PR raises concerns regarding whether the Commission could protect such information from public disclosure. If publicly disclosed, this proprietary information could put reporting entities at a significant competitive disadvantage. Certain questions in both proposed forms request information on pool assets under management, key service providers used by operators and advisors, position-level information, pool performance, pool subscriptions and redemptions, and the market value of pool assets invested in different types of securities and swaps. The Commission has determined that at least one of the nine exemptions to the Freedom of Information Act, 5 U.S.C. 552 *et seq.,* ("FOIA") [29] and section 8(a)(1) of the CEA [30] protect certain proprietary information like the information described above that the Commission would obtain through proposed forms CPO–PQR and CTA–PR.[31] A discussion of the specific exemption from FOIA disclosure and the privacy protections afforded under section 8(a)(1) of the CEA is described immediately below.

In general, FOIA requires the Commission and other Federal agencies to provide the fullest possible disclosure of information unless such information is otherwise exempted pursuant to one (or more) of nine exemptions under FOIA.[32] Accordingly, the Commission is required by FOIA to make public its records and actions unless a specific exemption is available.

Commercial and financial information and trade secrets are generally exempted from public disclosure under FOIA.[33] Information will qualify for this exemption if the public disclosure of such information would cause substantial harm to the competitive position of the person from whom the information was obtained.[34] As noted above, the Commission believes that proposed forms CPO–PQR and CTA–PR would require CPOs and CTAs, respectively, to report a great deal of proprietary information that, if publicly disclosed, would cause substantial harm to the competitive positions of those entities.

Section 8(a)(1) of the CEA provides, in relevant part, that "except as otherwise specifically authorized in the [CEA], the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." [35] The CEA does not specifically authorize the Commission to disclose to the public the type of proprietary information collected in proposed forms CPO–PQR and CTA–PR.

Currently, § 145.5 of the Commission's regulations sets out the Commission's general policy to protect from public disclosure those portions of "nonpublic records" [36] filed with it, which are exempted under the commercial and financial information exemption from FOIA.[37] Specifically, § 145.5 provides that "[t]he Commission shall publish or make available reasonably segregable portions of 'nonpublic records' * * *" subject to a FOIA request if those portions are not listed in § 145.5.[38]

To clarify the Commission's determination to treat certain proprietary information collected in proposed forms CPO–PQR and CTA–PR as nonpublic records—thereby protecting such information from public disclosure—the Commission proposes

[29] The nine exemptions are found in 5 U.S.C. 552(b)(1)–(7).

[30] *See* 7 U.S.C. 12(a)(1).

[31] Section 16 of the CEA, 7 U.S.C. 20, also prohibits the Commission from disclosing such data and information in market reports furnished to the public under that section. Section 16 is not, however, applicable to the proposed rulemaking because the reports to which it refers are investigations of such conditions as supply, demand, and prices in the markets for "goods, articles, services, rights, and interests which are the subject of futures contracts."

[32] Section 552(b)(3) of FOIA provides that another statute may provide a FOIA exemption. Section 404 of the Dodd-Frank Act sets out such an exemption. Specifically, section 404 precludes the SEC from being compelled under FOIA to reveal proposed Form PF or information contained therein required to be filed with the SEC except to Congress upon agreement of confidentiality or to comply with a court order or other regulatory request. As noted above, the Commission and SEC are jointly proposing Form PF in a forthcoming release. The Dodd-Frank Act does not include similar language precluding the Commission from being compelled to reveal similar information to the public.

[33] *See* 5 U.S.C. 552(b)(4). "Commercial" and "financial" are given "ordinary meanings." *See Bd. of Trade of the City of Chicago* v. *CFTC,* 627 F.2d 392, 394–95 (DC Cir. 1980).

[34] *See, e.g., Pub. Citizen Health Research Group* v. *FDA,* 704 F.2d 1280,1291 (DC Cir. 1983).

[35] 7 U.S.C. 12(a)(1).

[36] Nonpublic records are defined as, among other things, information published in the **Federal Register**, final Commission opinions, orders, statements of policy and interpretations, administrative manuals and instructions, indices, and records released in response to FOIA requests that have been, or the Commission anticipates will be, the subject of additional FOIA requests.

[37] *See* 17 CFR 145.5.

[38] *Id.*

to list such information in § 145.5(d).[39] Specifically, the Commission proposes to list the following schedules and questions in proposed forms CPO–PQR and CTA–PR, the responses to which the Commission would deem to be nonpublic records:

Proposed form CPO–PQR:

- Proposed schedule A: Question 2, subparts (b) and (d); Question 3, subparts (g) and (h); Question 10, subparts (b), (c), (d), (e), and (g); Question 11; Question 12; and Question 13.
- Proposed schedule B: All.
- Proposed schedule C: All.

Proposed form CTA–PR:

- Proposed schedule B: Question 4, subparts (b), (c), (d), and (e); Question 5; and Question 6.

2. Proposed Amendments to § 147.3

The Commission's collection of certain proprietary information through proposed forms CPO–PQR and CTA–PR raises concerns regarding whether the Commission could protect such information from public disclosure under The Government in the Sunshine Act, 5 U.S.C. 552b ("Sunshine Act"), which are substantively identical to those discussed above with respect to FOIA. The Sunshine Act was enacted to ensure that agency action is open to public scrutiny and contains exceptions to publication to the extent that such agency actions, or portions of them, are protected by one or more exemptions,[40] which are identical to those under FOIA, discussed above. Accordingly, the Commission is required by the Sunshine Act to make public its records and actions unless a specific exemption is available. Commission meetings, or portions thereof, may be "closed" under the Sunshine Act where the Commission determines that open meetings will likely reveal information protected by an exemption.[41]

The Commission believes that portions of the filings required by proposed § 4.27 through proposed forms CPO–PQR and CTA–PR are protected from disclosure as confidential commercial or financial information under Sunshine Act exemption (c)(4), which prohibits the disclosure of "trade secrets and commercial or financial information obtained from a person and privileged or confidential,"[42] for reasons that are substantively identical to the rationale discussed supra with respect to FOIA.

The Commission further believes that the portions of forms CPO–PQR and CTA–PR that are protected under Sunshine Act exemption (c)(4) are also protected from disclosure by Sunshine Act exemption (c)(8), pursuant to which the Commission is authorized to withhold from the public matter "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."[43] Section 147.3(b) of the Commission's regulations provides that the Commission generally will not make public matters that are "contained in or related to examinations, operating, or conditions reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions." The Commission is aware that no court has considered directly whether Commission registrants are financial institutions for the purposes of Sunshine Act exemption (c)(8). The Commission believes, however, that the language of the Sunshine Act's legislative history contemplates the inclusion of commodities professionals, including futures commission merchants, designated contract markets, derivatives transaction execution facilities, CPOs, and CTAs.[44]

In light of the foregoing considerations, the Commission is proposing to amend § 147.3 to exempt from mandatory disclosure, pursuant to Sunshine Act exemptions (c)(4) and (c)(8), the portions of proposed forms CPO–PQR and CTA–PR as set forth below:

Proposed form CPO–PQR:

- Proposed schedule A: Question 2, subparts (b) and (d); Question 3, subparts (g) and (h); Question 10, subparts (b), (c), (d), (e), and (g); Question 11; Question 12; and Question 13.
- Proposed schedule B: All.
- Proposed schedule C: All.

Proposed form CTA–PR:

- Proposed schedule B: Question 4, subparts (b), (c), (d), and (e); Question 5; and Question 6.

C. Proposed Amendments to § 4.5: Reinstating Trading Criteria for Exclusion From the CPO Definition

The exclusion from the CPO definition under § 4.5 is available to certain otherwise regulated persons, including investment companies registered under the Investment Company Act of 1940,[45] in connection with their operation of specified trading vehicles. Prior to amendments that the Commission made in 2003, § 4.5 required entities to file a notice of eligibility that contained a representation that the use of commodity futures for non bona fide hedging purposes will be limited to five percent of the liquidation value of the qualifying entity's portfolio and that the entity will not market the fund as a commodity pool to the public.[46]

The 2003 amendments revised § 4.5 to require that notices of eligibility only include representations that:

> [T]he qualifying entity: (i) Will disclose in writing to each participant, whether existing or prospective, that the qualifying entity is operated by a person who has claimed an exclusion from the definition of the term 'commodity pool operator' under the [Commodity Exchange] Act, and therefore, who is not subject to registration or regulation as a pool operator under the [Commodity Exchange] Act * * * and (ii) Will submit to special calls as the Commission may require.[47]

When adopting the final amendments, the Commission explained that its decision to delete the prohibition on marketing was driven by comments claiming that "the 'otherwise regulated' nature of the qualifying entities * * * would provide adequate customer protection, and, further, that compliance with the subjective nature of the marketing restriction could give rise to the possibility of unequal enforcement where commodity interest trading was restricted."[48]

In 2010, the Commission became aware of certain registered investment companies that were offering series of de facto commodity pool interests claiming exclusion under § 4.5. The Commission consulted with market participants and NFA regarding this practice. Following this consultation, NFA submitted a petition for rulemaking in which NFA suggested certain revisions to § 4.5 with respect to registered investment companies.[49] On September 17, 2010, the Commission solicited comments from the public on

[39] Section 145.5(d) tracks the language of its FOIA counterpart, exemption (b)(4).

[40] The exemptions from disclosure set forth in the Sunshine Act are codified in 5 U.S.C. 552b(c). There are 10 listed exemptions.

[41] The Commission's Sunshine Act obligations are codified in its part 147 rules, 17 CFR part 147.

[42] 5 U.S.C. 552b(c)(4).

[43] 5 U.S.C. 552b(c)(8).

[44] *See* S. Rep. No. 354, 94th Cong., 1st Sess. 24 (1975) (stating that "financial institution" is "intended to include banks, savings and loan associations, credit unions, brokers and dealers in securities or commodities, exchanges dealing in securities and commodities, such as the New York Stock Exchange, investment companies, investment advisors, self-regulatory organizations subject to 15 U.S.C. 78s, and institutional managers as defined in 15 U.S.C. 78m.").

[45] 15 U.S.C. 80a–1 *et seq.*

[46] 50 FR 15868, 15883, Apr. 23, 1985.

[47] 17 CFR 4.5(c)(2).

[48] 68 FR 47221, 47223, Aug. 8, 2003.

[49] 75 FR 56997, Sept. 17, 2010.

NFA's petition for rulemaking, which proposed the reinstatement of the pre-2003 operating restrictions in § 4.5. In its petition, NFA proposed that § 4.5(c)(2) be amended to read as follows:

(iii) Furthermore, if the person claiming the exclusion is an investment company registered as such under the Investment Company Act of 1940, then the notice of eligibility must also contain representations that such person will operate the qualifying entity as described in [Rule] 4.5(b)(1) in a manner such that the qualifying entity: (a) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of [Rule] 1.3(z)(1)[50]; Provided, however, That in addition, with respect to positions in commodity futures or commodity option contracts that may be held by a qualifying entity only which do not come within the meaning and intent of [Rule] 1.3(z)(1), a qualifying entity may represent that the aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; and, Provided further, That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in [Rule] 190.01(x) may be excluded in computing such [five] percent; (b) Will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in (or otherwise seeking investment exposure to) the commodity futures or commodity options markets.[51] (Emphasis removed).

To stop the practice of registered investment companies offering futures-only investment products without Commission oversight, the Commission is proposing to amend § 4.5 to reinstate the pre-2003 operating criteria consistent with the language proposed by NFA in its petition. The Commission believes that NFA's proposed language is an appropriate point at which to begin discussions regarding the Commission's concerns. Moreover, the Commission believes that imposing such restrictions would limit the possibility of entities engaging in regulatory arbitrage whereby operators of otherwise regulated entities that have significant holdings in commodity interests would avoid registration and compliance obligations under the Commission's regulations. The Commission believes that this is appropriate to ensure consistent treatment of operators of commodity pools regardless of registration status with other regulators. In addition, the Commission has determined that adopting the restrictions proposed by NFA would ensure that entities that operate funds that are de facto commodity pools would be required to report the activities of such pools on the proposed form CPO–PQR. The Commission, however, is cognizant of the fact that the structure of these otherwise regulated entities may result in operational difficulties with respect to compliance with part 4 of the Commission's regulations. To that end, the Commission poses several questions, immediately below, derived from comments received with respect to NFA's petition to solicit comments regarding what the Commission should consider with respect to the regulation of such entities:

- Several commenters to NFA's petition have suggested that the marketing strategies used by entities claiming relief under § 4.5 would be prohibited under NFA's proposal. Specifically, it has been argued that marketing these funds under proposed § 4.5 would be impossible, or nearly impossible, as it would be cost prohibitive. The Commission solicits comments on how these marketing strategies would be affected by the proposed rule change. Specifically, should the proposed restriction on marketing as a commodity pool or as a vehicle for providing exposure to commodity interests be broader or more narrow?
- It has been suggested that funds operated pursuant to relief under § 4.5 are now following numerous trading strategies, including "life cycle" fund strategies, which are set to maximize trading successes for certain trading periods, or horizons. The Commission seeks comment on the differential impact the proposed rulemaking would have on the various trading strategies implemented by funds operated under § 4.5, including which types of funds might be more severely impacted than others, and, if so, why?
- Some commenters to the NFA petition have suggested that the term "marketing" needs to be clarified. What considerations should be made with respect to such a definition? Further, what specific areas related to marketing are most problematic and, if so, why?
- Commenters to the NFA petition have suggested that the changes to § 4.5 would result in direct conflicts with SEC regulations relating to registered investment companies. Please detail which rules and regulations are in conflict, and indicate how these could be best addressed by the two Commissions.
- Is a limit of five percent of the liquidation value of the portfolio attributable to non-bona fide hedging purposes the appropriate threshold? Should a higher or lower limit apply? Should the calculation of the limit include swaps, or be limited to futures and options? Is a portfolio based criterion appropriate or is there another more effective means for identifying entities that should be registered as CPOs?
- Additionally, the Commission is soliciting comment regarding the implementation of the proposed changes to § 4.5. What issues should the Commission consider with respect to the ability of registered investment companies to comply with the disclosure document and reporting delivery requirements; recordkeeping; and related fund performance disclosure requirements under part 4 of the Commission's regulations? How much time will be necessary for entities that have previously claimed exclusion under this section to comply with the proposed changes? Should any entities that have previously claimed exclusion under this section be exempted from compliance with the proposed revisions to § 4.5?

D. Proposed Amendments to § 4.7: Removing Exemptive Relief From the Certification Requirement for Pool Annual Reports and Incorporating Accredited Investor Definition

1. Removing Exemptive Relief From the Certification Requirement for Financial Statements in Pool Annual Reports

In 1992, the Commission proposed and adopted § 4.7, which provided relief from disclosure, reporting, and recordkeeping obligations under part 4 of the Commission's regulations for CPOs and CTAs that are privately offered to sophisticated persons.[52] Section 4.7(b)(3) provides relief from the certification requirement for financial statements contained in annual reports distributed to participants and filed with NFA.[53]

Despite the availability of the exemption from the audit requirement under § 4.7(b)(3)(i), the vast majority of CTAs and CPOs that operate commodity pools under § 4.7 have their annual reports for those pools audited by certified public accountants. For example, 759 of the 892 pools that operated pursuant to exemptive relief

[50] The revisions to § 4.5 proposed herein contain a reference to the definition of "bona fide hedging" as it is currently set forth in § 1.3(z) of the Commission's regulations. The Commission notes that rules proposed in the future regarding "bona fide hedging" may require the proposed revisions to be amended to reflect such new regulations.

[51] 75 FR 56997, 56998, Sept. 17, 2010.

[52] *See* 17 CFR 4.7.

[53] *See* 17 CFR 4.7(b)(3).

under § 4.7 in fiscal year 2009 (*i.e.,* 85% of all pools operated under § 4.7 in that year) filed certified annual reports despite being eligible for exemptive relief from certification in § 4.7(b)(3).

In light of the stated purposes of the Dodd-Frank Act (*i.e.,* transparency and accuracy of information across market participants), the Commission proposes to extend the requirement for certified financial statements in commodity pool annual reports to commodity pools with participants who are QEPs. The Commission believes that requiring certification of financial information by an independent accountant in accordance with established accounting standards will ensure the accuracy of the financial information submitted by its registrants. Accordingly, proposed section 3 of the amendatory text would remove the exemption in § 4.7(b)(3)(C)(ii) from the requirement that certified financial statements be included in the annual reports to participants in their commodity pools. Commission staff will continue to consider requests for exemption from the audit requirement pursuant to the general exemptive provisions of § 4.12(a), in accordance with the criteria under which such relief previously has been granted.[54]

2. Incorporating by Reference the Accredited Investor Standard

The Commission is also proposing to amend §§ 4.7(a)(3)(ix) and (a)(3)(x), which list those persons required to satisfy the portfolio requirement to be QEPs.[55] In 1992, when the Commission proposed and adopted § 4.7, it stated that the relief provided in § 4.7 was intended for persons who were "highly accredited investors",[56] which was defined as "accredited investors", per the terms of § 230.501 of regulation D [57] under the Securities Act of 1933,[58] who also satisfy a portfolio value requirement.[59] Section 4.7(a)(3)(ix) incorporates the specific net worth provision set forth in § 230.501(a)(5) of the SEC's regulations.[60] Similarly, § 4.7(a)(3)(x) incorporates the income standards of § 230.501(a)(6) of the SEC's regulations.[61]

Section 413 of the Dodd-Frank Act instructs the SEC to examine and adjust the threshold for "accredited investor" status under its regulations and initially increases the threshold amount so that it is significantly greater than the current provisions of regulation D. Because the Commission has incorporated the "accredited investor" definition from regulation D into its definition of QEP, the Commission has determined that it is necessary to amend §§ 4.7(a)(3)(ix) and (a)(3)(x) to incorporate the new accredited investor standard. Thus, the Commission's proposal seeks to amend § 4.7 to incorporate the accredited investor standard from Regulation D by reference, rather than by direct inclusion of its terms. Incorporation by reference will permit the Commission's definition of QEP to continue to include the specific terms of the accredited investor standard in the event that it is later modified by the SEC without requiring the Commission to amend § 4.7 each time to maintain parity.

E. Proposed Amendments to §§ 4.13(a)(3) and (a)(4): Rescission of Exemption From Registration

The Commission proposes to rescind certain exemptions from registration provided in §§ 4.13(a)(3) and (a)(4). Section 4.13(a)(3) of the Commission's regulations currently provides that a person is exempt from registration as a CPO if the interests in the pool are exempt from registration under the Securities Act of 1933 and offered only to QEPs, accredited investors, or knowledgeable employees, and the pool's aggregate initial margin and premiums attributable to commodity interests do not exceed five percent of the liquidation value of the pool's portfolio.[62] Section 4.13(a)(4) of the Commission's regulations provides that a person is exempt from registration as a CPO if the interests in the pool are exempt from registration under the Securities Act of 1933 and the operator reasonably believes that the participants are all QEPs.[63]

As a result of the creation of exemptions from registration as a CPO under §§ 4.13(a)(3) and (a)(4), a large group of market participants have fallen outside of the oversight of regulators (*i.e.,* there is very little if any transparency or accountability over the activities of these participants). The Commission has concluded that continuing to grant an exemption from registration and reporting obligations for these market participants is outweighed by the Commission's concerns of regulatory arbitrage.

To address the lack of transparency and accountability, the Commission's proposal would eliminate the exemption under § 4.13(a)(3). Indeed, the Commission believes that it is possible for a commodity pool to have a portfolio that is sizeable enough that even if just five percent of the pool's portfolio were committed to margin for futures, the pool's portfolio could be so significant that the commodity pool would constitute a major participant in the futures market.

In addition, the Commission proposes to eliminate the exemption in § 4.13(a)(4) because there are no limits on the amount of commodity interest trading in which pools operating under this regulation can engage. That is, it is possible that a commodity pool that is exempted from registration under § 4.13(a)(4) could be invested solely in commodities.

With the passage of the Dodd-Frank Act, the regulatory environment has changed from that which was in existence when §§ 4.13(a)(3) and (a)(4) were promulgated in 2003. As stated previously, one of the primary purposes of the Dodd-Frank Act is to promote transparency with respect to the activities of participants in the financial markets. Sections 403 and 404 of the Dodd-Frank Act generally require registration and reporting by investment advisers to private funds.[64] Many private funds claim an exemption from SEC registration under sections 3(c)(1) and (7) of the Investment Company Act of 1940 (the "Investment Company Act").[65] The Dodd-Frank Act, although not rescinding these exemptions from registration under the Investment Company Act, requires the advisers of such funds to register with the SEC as "private fund investment advisers".[66] The Commission's proposal seeks to eliminate the exemptions under

[54] *See, e.g.,* CFTC Staff Letters 10–02, Feb. 23, 2010; 10–07, Jan. 7, 2010; 10–08, Feb. 23, 2010; 10–09, Feb. 25, 2010; 10–11, Mar. 3, 2010; 10–18, Apr. 12, 2010, at: *http://www.cftc.gov/LawRegulation/CFTCStaffLetters/LettersAcrchive/2010/index.htm.*

[55] *See* 17 CFR 4.7(a)(3)(ix).

[56] *See* 57 FR 34853, Aug. 7, 1992.

[57] *See* 17 CFR 203.501.

[58] *See* 15 U.S.C. 77a, *et seq.*

[59] *See* 57 FR at 34855.

[60] *See id.* at 34855.

[61] *See id.*

[62] *See* 17 CFR 4.13(a)(3). CPOs claiming relief under § 4.13 are required to submit to special calls by the Commission to demonstrate eligibility, however, even if the Commission determined to make a special call, it would not be entitled to information regarding the pool's activities beyond those implicated by the claim for exemptive relief. Therefore, the efficacy of special calls as a tool to gain any information on par with that required by Part 4 of the Commission's regulations is limited.

[63] *See id.* 4.13(a)(4). Natural persons who are required to satisfy the portfolio requirement to be considered QEPs are not included in the persons to whom a pool operating under this exemption may be offered.

[64] *See* sections 403 and 404 of the Dodd-Frank Act. The Dodd-Frank Act does grant a few exemptions from the registration requirement. For example, section 407 provides that [venture capital] funds are not required to register with the SEC.

[65] *See* 15 U.S.C. 80a–3.

[66] *See* sections 403 and 404 of the Dodd-Frank Act for the general registration provisions for private fund investment advisers.

§§ 4.13(a)(3) and (4) for operators of pools that are similarly situated to private funds that previously relied on the exemptions under §§ 3(c)(1) and (7) of the Investment Company Act and § 203(b)(3) of the Investment Advisers Act. It is the Commission's view that the operators of these pools should be subject to similar regulatory obligations, including proposed form CPO–PQR, in order to provide improved transparency and increased accountability with respect to these pools. The Commission has determined that it is appropriate to limit regulatory arbitrage through harmonization of the scope of its data collection with respect to pools that are similarly situated to private funds so that operators of such pools will not be able to avoid oversight by either the Commission or the SEC through claims of exemption under the Commission's regulations.

The Commission is soliciting comment regarding the implementation of the proposed rescission of §§ 4.13(a)(3) and (a)(4). How much time will be necessary for entities that have previously claimed exemption under these sections to comply with the proposed changes? How should the Commission address entities whose activities do not require registration; *i.e.,* should such entities be required to file notice with the Commission to avoid registration? Should any entities that have previously claimed exemption under these sections be exempted from compliance with the proposed revisions to §§ 4.13(a)(3) and (a)(4)? Should the Commission consider an alternative de minimis exemption under § 4.13, and, if so, what criteria should be required to claim such exemption?

F. Proposed Amendments to §§ 4.5, 4.13, and 4.14: Requiring Annual Filings of Notices of Claims of Exemption

The Commission has the power to "make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate the provisions or to accomplish the purposes of [the CEA]."[67] It is pursuant to this authority that the Commission promulgated the various exemptions from registration set forth in §§ 4.5, 4.13, and 4.14. It is also pursuant to this authority that the Commission may revise the criteria for claiming such exemptive relief.

Under the current provisions of part 4 of the Commission's regulations, persons claiming exemptive relief from inclusion in the definition of a CPO or from registration as a CPO or CTA are required to file only a notice of such claim with NFA and to comply with a few ministerial requirements.[68] For entities claiming relief under §§ 4.5, 4.13, or 4.14, the filing of an exemption notice is the end of these entities' interaction with the Commission or NFA (in the absence of a special call or their capture by the large trader reporting system). The Commission's regulations do not explicitly require these entities to inform the Commission in the event that these entities cease operating as a going concern.[69]

Based on the foregoing, the Commission proposes to require all persons claiming exemptive or exclusionary relief under §§ 4.5, 4.13, and 4.14 of the Commission's regulations to confirm their notice of claim of exemption or exclusion on an annual basis.[70] The Commission believes that an annual notice requirement would promote improved transparency regarding the number of entities either exempt or excluded from the Commission's registration and compliance programs, which is consistent with one of the primary purposes of the Dodd-Frank Act. An annual notice requirement would enable the Commission to determine whether exemptions and exclusions should be modified, repealed, or maintained as part of the Commission's ongoing assessment of its regulatory scheme. If a person chooses to withdraw their certification other than due to the cessation of activities requiring registration or exemption therefrom, the Commission's proposal would require such person to file a registration application with NFA within 30 days of the anniversary date of the initial claim for exemptive relief. Because persons are required to file electronically with NFA, NFA would conduct the annual confirmation process through its electronic system, similar to the annual updates to registration information that are required of registered firms under § 3.10(d). The Commission's proposal would make the failure to comply with the annual notice requirement result in a deemed withdrawal of the exemption or exclusion and under those circumstances could result in the initiation of an enforcement action.

The Commission invites comment on whether 30 days is an adequate period of time in which to affirm. Does it make sense to require a filing within 30 days of the anniversary date of the initial filing, or within 30 days of the end of the calendar year?

G. Proposed Amendments to §§ 4.24 and 4.34: New Risk Disclosure Statement for CPOs and CTAs

The enactment of the Dodd-Frank Act expanded the scope of the Commission's authority to include swaps.[71] In light of this expansion of the Commission's jurisdiction, the Commission has determined that it is necessary to amend the mandatory Risk Disclosure Statements[72] under §§ 4.24(b) and 4.34(b) for CPOs and CTAs to describe certain risks specific to swaps transactions. Specifically, the Commission believes that it is critical that registered CPOs and CTAs inform pool participants and clients about the potential risks that swaps may have limited liquidity and may be hard to value, which may result in difficulties regarding the pool participants' ability to redeem their interests in the pool and clients' ability to liquidate their accounts. The Commission believes that the significance of these risks should be appropriately highlighted by including a discussion in the Risk Disclosure Statement at the beginning of the document.

The Commission is specifically soliciting comment as to whether the risks discussed in the proposed Risk Disclosure Statement are the significant risks to pool participants and clients that are posed by the use of swaps by CPOs and CTAs? Should any other risks be included in the proposed Risk Disclosure Statement? Should any proposed language be omitted?

H. Proposed Amendments to Part 4: Conforming Amendments

As a result of the amendments discussed in this proposal, the Commission proposes to amend various provisions of part 4 of the Commission's regulations for the purposes of making confirming changes. Specifically, the proposal would delete references to repealed rules (*e.g.,* §§ 4.13(a)(3) and

[67] 7 U.S.C. 12a(5).

[68] Under the Commission's regulations, persons claiming such relief remain subject to special calls (17 CFR 4.5(c)(2)(ii), 4.13(c)(2), 4.14(a)(8)(iv)(B)) and remain subject to all requirements applicable to traders on our markets (*i.e.,* large trader reporting, position limits, anti-fraud provisions, *etc.*).

[69] Since 2003, the Commission, through NFA, has received over 10,000 notices of claim for exemptive relief under §§ 4.13(a)(3) and (a)(4), which represent approximately 30,000 pools. The Commission has no simple and economical way of determining whether all of the approximately 10,000 entities filing the notices claiming relief remain going concerns. Therefore, it is difficult to estimate the number of exempt entities currently operating in the derivative markets.

[70] If the proposed repeal of §§ 4.13(a)(3) and (a)(4) is adopted, annual notices will still be required to be filed pursuant to §§ 4.13(a)(1) and (a)(2) under this proposal. Regardless of whether the repeal of §§ 4.13(a)(3) and (a)(4) is adopted, all CPOs will be required to file annual notices in order to claim exemptive relief under all provisions of § 4.13.

[71] *See generally* Title VII of the Dodd-Frank Act.

[72] *See* 17 CFR 4.24(b), 4.34(b).

(a)(4), *etc.*) in other sections of the Commission's regulations.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[73] requires that agencies, in proposing rules, consider the impact of those rules on small businesses.

CPOs: The Commission has determined previously that registered CPOs are not small entities for the purpose of the RFA.[74] With respect to CPOs exempt from registration, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Rule 4.13(a)(2).[75] Such CPOs will continue to qualify for either exemption or exclusion from registration and therefore will not be required to report on proposed form CPO–PQR; however, they will have an annual notice filing obligation confirming their eligibility for exemption or exclusion from registration and reporting. The Commission estimates that the time required to complete this new requirement will be approximately 0.25 of an hour, which the Commission has concluded will not be a significant time expenditure. The Commission has determined that the proposed regulation will not create a significant economic impact on a substantial number of small entities.

CTAs: The Commission has previously decided to evaluate, within the context of a particular rule proposal, whether all or some CTAs should be considered to be small entities, and if so, to analyze the economic impact on them of any such rule.[76] Schedule A of proposed form CTA–PR is proposed to be required of all registered CTAs, which necessarily includes entities that would be considered small. The majority of the information requested on schedule A is information that is readily available to the CTA or readily calculable by the CTA, regardless of size. Therefore, the Commission estimates that the time required to complete the items contained in schedule A will be approximately 0.5 hours as it is comprised of only two questions, which solicit information that is expected to be readily available. The Commission has determined that proposed schedule A will not create a significant economic impact on a substantial number of small entities. With respect to proposed form CTA–PR, only CTAs directing pool assets equal to or in excess of $150 million will be obligated to file schedule B. The Commission is hereby determining that for purposes of this rulemaking that CTAs directing pool assets equal to or in excess of $150 million are not small entities for RFA purposes. Accordingly, the Chairman, on behalf of the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules, will not have a significant impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA.[77] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget ("OMB"). The Commission is proposing to amend Collection 3038–0023 to allow for an increase in response hours for the proposed rulemaking resulting from the rescission of §§ 4.13(a)(3) and (a)(4) and the modification of § 4.5. The Commission is also proposing to amend Collection 3038–0005 to allow for an increase in response house for the proposed rulemaking associated with new and modified compliance obligations under part 4 of the Commission's regulations resulting from this proposal. The Commission, therefore, is submitting this proposal to the OMB for its review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for these collections are "Part 3—Registration" (OMB Control number 3038–0023) and "Part 4—Commodity Pool Operators and Commodity Trading Advisors" (OMB Control number 3038–0005). Responses to this collection of information would be mandatory.

The Commission will protect proprietary information according to the Freedom of Information Act ("FOIA") and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market position of any person and trade secrets or names of customers."[78] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[79]

1. Additional Information Provided by CPOs and CTAs

a. OMB Control Number 3038–0023

Part 3 of the Commission's regulations concern registration requirements. Existing Collection 3038–0023 has been amended to reflect the obligations associated with the registration of new entrants, *i.e.,* CPOs that were previously exempt from registration under §§ 4.5, 4.13(a)(3) and 4.13(a)(4), that had not previously been required to register. Because the registration requirements are in all respects the same as for current registrants, the collection has been amended only insofar as it concerns the increased estimated number of respondents and the corresponding estimated annual burden.

Estimated number of respondents: 77,857.

Annual responses by each respondent: 78,109.

Annual reporting burden: 7,029.8.

b. OMB Control Number 3038–0005

Part 4 of the Commission's regulations concerns the operations of CTAs and CPOs, and the circumstances under which they may be exempted from registration. Under existing Collection 3038–0005 the estimated average time spent per response has not been altered; however, adjustments have been made to the collection to account for current information available from NFA concerning CPOs and CTAs registered or claiming exemptive relief under the part 4 regulations, and the new burden expected under proposed § 4.27. The total burden associated with Collection 3038–005 is expected to be:

Estimated number of respondents: 31,322.

Annual responses by each respondent: 69,082.

Estimated average hours per response: 8.77.

Annual reporting burden: 272,419.6.

Proposed § 4.27 is expected to be the main reason for the increased burden under Collection 3038–005. Specifically, the Commission expects the following burden with respect to the various schedules of proposed forms CPO–PQR and CTA–PR:

Form CPO–PQR: Schedule A:

Estimated number of respondents: 4,060.

Annual responses by each respondent: 4.

Estimated average hours per response: 8.

[73] *See* 5 U.S.C. 601, *et seq.*

[74] *See* 47 FR 18618, 18619, Apr. 30, 1982.

[75] *See* 47 FR at 18619–20.

[76] *See* 47 FR at 18620.

[77] *See* 44 U.S.C. 3501 *et seq.*

[78] *See* 7 U.S.C. 12.

[79] *See* 5 U.S.C. 552a.

Annual reporting burden: 129,920.

Form CPO–PQR: Schedule B:

Estimated number of respondents: 920.
Annual responses by each respondent: 4.
Estimated average hours per response: 4.
Annual reporting burden: 14,720.

Form CPO–PQR: Schedule C:

Estimated number of respondents: 260.
Annual responses by each respondent: 4.
Estimated average hours per response: 18.
Annual reporting burden: 18,720.

Form CTA–PR: Schedule A:

Estimated number of respondents: 450.
Annual responses by each respondent: 4.
Estimated average hours per response: 0.5.
Annual reporting burden: 900.

Form CTA–PR: Schedule B:

Estimated number of respondents: 150.
Annual responses by each respondent: 4.
Estimated average hours per response: 7.
Annual reporting burden: 4,200.

2. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (ii) determine whether there are ways to enhance the quality, utility, and clarity of the information collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that they can be summarized and addressed in the final rule. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking.

C. Cost-Benefit Analysis

Section 15(a) of the CEA [80] requires the Commission to consider the costs and benefits of its actions before issuing rules, regulations, or orders under the CEA. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of its rules, regulations or orders or to determine whether the benefits outweigh the costs. Rather, section 15(a) requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding the costs, a particular rule, regulation, or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

The proposed amendments to the Commission's regulations require CPOs and CTAs registered with the CFTC to file in an electronic format the proposed forms CPO–PQR and CTA–PR, respectively. Under the proposed rule, most CPOs and CTAs would be required to provide quarterly a limited amount of basic information on forms CPO–PQR and CTA–PR about the operations of their commodity pools. Only large CPOs and CTAs would have to submit on a quarterly basis the full complement of systemic risk related information required by forms CPO–PQR and CTA–PR.

With respect to costs, the Commission has determined that: (1) Although they are necessary to U.S. financial stability, the proposed reporting requirements will create additional compliance costs for these registrants; (2) without the proposed reporting requirements imposed on CPOs and CTAs, the Commission may not have sufficient information to provide effective oversight of participants in the futures and derivatives markets; and (3) the proposed reporting requirements, once finalized, will provide the Commission with better information regarding the business operations, creditworthiness, use of leverage, and other material information of certain registered CPOs and CTAs.

In addition to the costs associated with the proposed data collection instruments, the Commission has determined the following with respect to the costs of the other proposed changes to part 4 of the Commission's regulations impacting entitlement to exemptive relief from registration: (1) Unless the Commission rescinds the exemptive relief delineated in §§ 4.13(a)(3) and 4.13(a)(4), the information collected under proposed forms CPO–PQR and CTA–PR will not provide a complete understanding of the risks arising from the activities of CPOs and CTAs in the commodity derivatives markets; (2) failing to adopt revisions to § 4.5 that are substantively similar to those proposed in NFA's petition for rulemaking would result in disparate treatment of similarly situated collective investment schemes; (3) requiring the filing of an annual notice to claim exemptive relief under §§ 4.5, 4.13, and 4.14 enables the Commission to better understand the universe of entities claiming relief from the Commission's regulatory scheme; and (4) although the Commission believes that the abovementioned amendments are necessary, the proposed changes will result in additional costs to certain market participants due to registration and compliance obligations.

The Commission has determined that the proposed changes will provide a benefit to all investors and market participants by providing the Commission and other policy makers with more complete information about these registrants. In turn, this information would enhance the Commission's ability to form and frame appropriately tailored regulatory policies to the commodity pool industry and its operators and advisors. As mentioned above, the Commission does not have access to this information today and has instead made use of information from other, less reliable sources.

The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data and other information that they may have

[80] *See* 7 U.S.C. 19(a); *see also* 5 U.S.C. 801(a)(1)(B)(i).

quantifying or qualifying the costs and benefits of this proposed rule with their comment letters.

List of Subjects

17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 145

Commission records and information, Confidential business information.

17 CFR Part 147

Open commission meetings, Sunshine Act.

Accordingly, 17 CFR chapter I is proposed to be amended as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. In § 4.5, add paragraphs (c)(2)(iii) and (c)(5) to read as follows:

§ 4.5 Exclusion from the definition of the term "commodity pool operator."

* * * * *

(c) * * *

(2) * * *

(iii) Furthermore, if the person claiming the exclusion is an investment company registered as such under the Investment Company Act of 1940, then the notice of eligibility must also contain representations that such person will operate the qualifying entity as described in Rule 4.5(b)(1) in a manner such that the qualifying entity:

(A) Will use commodity futures or commodity options contracts, or swaps solely for bona fide hedging purposes within the meaning and intent of [Rule] 1.3(z)(1); Provided however, That in addition, with respect to positions in commodity futures or commodity option contracts, or swaps that may be held by a qualifying entity only which do not come within the meaning and intent of Rule 1.3(z)(1), a qualifying entity may represent that the aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; and, Provided further, That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in Rule 190.01(x) may be excluded in computing such five percent;

(B) Will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in (or otherwise seeking investment exposure to) the commodity futures, commodity options, or swaps markets.

* * * * *

(5) Annual notice: Each person who has filed a notice of exclusion under this section must affirm the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 30 days of the anniversary of the initial filing date through National Futures Association's electronic exemption filing system.

* * * * *

3. In § 4.7, revise paragraphs (a)(3)(ix) and (x) and (b)(3) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(a) * * *

(3) * * *

(ix) A natural person whose individual net worth, or joint net worth with that person's spouse at the time of either his purchase in the exempt pool or his opening of an exempt account would qualify him as an accredited investor as defined in Sec. 230.501(a)(5) of this title;

(x) A natural person who would qualify as an accredited investor as defined in Sec. 203.501(a)(6) of this title;

* * * * *

(b) * * *

(3) Annual report relief. (i) Exemption from the specific requirements of § 4.22(c) of this part; *Provided,* that within 90 calendar days after the end of the exempt pool's fiscal year or the permanent cessation of trading, whichever is earlier, the commodity pool operator electronically files with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by that section, an annual report for the exempt pool, affirmed in accordance with § 4.22(h) which contains, at a minimum:

(A) A Statement of Financial Condition as of the close of the exempt pool's fiscal year (elected in accordance with § 4.22(g));

(B) A Statement of Operations for that year;

(C) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading. For a pool that invests in other funds, this information must include, but is not limited to, separately disclosing the amounts of income, management and incentive fees associated with each investment in an investee fund that exceeds five percent of the pool's net assets. The income, management and incentive fees associated with an investment in an investee fund that is less than five percent of the pool's net assets may be combined and reported in the aggregate with the income, management and incentive fees of other investee funds that, individually, represent an investment of less than five percent of the pool's net assets. If the commodity pool operator is not able to obtain the specific amounts of management and incentive fees charged by an investee fund, the commodity pool operator must disclose the percentage amounts and computational basis for each such fee and include a statement that the CPO is not able to obtain the specific fee amounts for this fund;

(D) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the financial statements are reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the financial statements are not required to include consolidated information for all series.

(ii) Legend. If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that effect on the cover page of each annual report.

* * * * *

4. In § 4.13:

a. Remove and reserve paragraphs (a)(3), (4), and (e)

b. Revise paragraph (b)(1)(ii)

c. Redesignate paragraph (b)(4) as paragraph (b)(5), and add new paragraph (b)(4).

The revision and addition read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(b) * * *

(2) * * *

(ii) Contain the section number pursuant to which the operator is filing the notice (*i.e.,* § 4.13(a)(1) or (2)) and

represent that the pool will be operated in accordance with the criteria of that paragraph; and

* * * * *

(4) Annual notice: Each person who has filed a notice of exemption from registration under this section must affirm the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 30 days of the anniversary of the initial filing date through National Futures Association's electronic exemption filing system.

* * * * *

5. In § 4.14:

a. Remove paragraph (a)(8)(i)(D)

b. Redesignate paragraph (a)(8)(iii)(D) as (a)(8)(iii)(E) and add new paragraph (a)(8)(iii)(D) to read as follows:

§ 4.14 Exemption from registration as a commodity trading adviser.

* * * * *

(a) * * *

(8) * * *

(iii) * * *

(D) Annual notice: Each person who has filed a notice of exemption from registration under this section must affirm the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 30 days of the anniversary of the initial filing date through National Futures Association's electronic exemption filing system.

* * * * *

6. In § 4.24, add paragraph (b)(5) to read as follows:

§ 4.24 General disclosures required.

* * * * *

(b) * * *

(5) If the pool may engage in swaps, the Risk Disclosure Statement must further state:

SWAPS TRANSACTIONS, LIKE OTHER FINANCIAL TRANSACTIONS, INVOLVE A VARIETY OF SIGNIFICANT RISKS. THE SPECIFIC RISKS PRESENTED BY A PARTICULAR SWAP TRANSACTION NECESSARILY DEPEND UPON THE TERMS OF THE TRANSACTION AND YOUR CIRCUMSTANCES. IN GENERAL, HOWEVER, ALL SWAPS TRANSACTIONS INVOLVE SOME COMBINATION OF MARKET RISK, CREDIT RISK, COUNTERPARTY CREDIT RISK, FUNDING RISK, LIQUIDITY RISK, AND OPERATIONAL RISK.

HIGHLY CUSTOMIZED SWAPS TRANSACTIONS IN PARTICULAR MAY INCREASE LIQUIDITY RISK, WHICH MAY RESULT IN A SUSPENSION OF REDEMPTIONS. HIGHLY LEVERAGED TRANSACTIONS MAY EXPERIENCE SUBSTANTIAL GAINS OR LOSSES IN VALUE AS A RESULT OF RELATIVELY SMALL CHANGES IN THE VALUE OR LEVEL OF AN UNDERLYING OR RELATED MARKET FACTOR.

IN EVALUATING THE RISKS AND CONTRACTUAL OBLIGATIONS ASSOCIATED WITH A PARTICULAR SWAP TRANSACTION, IT IS IMPORTANT TO CONSIDER THAT A SWAP TRANSACTION MAY BE MODIFIED OR TERMINATED ONLY BY MUTUAL CONSENT OF THE ORIGINAL PARTIES AND SUBJECT TO AGREEMENT ON INDIVIDUALLY NEGOTIATED TERMS. THEREFORE, IT MAY NOT BE POSSIBLE FOR THE COMMODITY POOL OPERATOR TO MODIFY, TERMINATE, OR OFFSET THE POOL'S OBLIGATIONS OR THE POOL'S EXPOSURE TO THE RISKS ASSOCIATED WITH A TRANSACTION PRIOR TO ITS SCHEDULED TERMINATION DATE.

* * * * *

7. Add § 4.27 to read as follows:

§ 4.27 Additional reporting by advisors of certain large commodity pools.

(a) *General definitions.* For the purposes of this section:

(1) *Commodity pool operator* or *CPO* has the same meaning as *commodity pool operator* defined in section 1a(11) of the Commodity Exchange Act;

(2) *Commodity trading advisor* or *CTA* has the same meaning as *commodity trading advisor* defined in section 1a(12);

(3) *Direct* has the same meaning as *direct* defined in section 4.10(f);

(4) *Net asset value* or *NAV* has the same meaning as *net asset value* as defined in section 4.10(b);

(5) *Pool* has the same meaning as *pool* as defined in section 1(a)(10) of the Commodity Exchange Act;

(6) *Reporting period* means each quarter ending March 31, June 30, September 30, or December 31;

(b) *Persons required to report.* A reporting person is:

(1) Any commodity pool operator that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder; or

(2) Any commodity trading advisor that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder.

(c) *Reporting.* (1) Except as provided in section (c)(2) of this section, each reporting person shall file with the National Futures Association, not later than 15 days after the end of the first reporting period during which such reporting person satisfies the requirements of paragraph (b) of this section, and not later than 15 days after the end of each quarter during the calendar year subsequent thereto, a report with respect to the directed assets of each pool under the advisement of the commodity pool operator consistent with appendix A to this part or commodity trading advisor consistent with appendix C to this part.

(2) Mid-Sized CPOs, as that term is defined in appendix A to this part, shall file with the National Futures Association such reports consistent with the time period described in appendix A.

(3) All financial information shall be reported in accordance with generally accepted accounting principles consistently applied.

(d) [Reserved]

(e) *Filing requirements.* Each report required to be filed with the National Futures Association under this section shall:

(1)(i) Contain an oath and affirmation that, to the best of the knowledge and belief of the individual making the oath and affirmation, the information contained in the document is accurate and complete; *Provided, however,* That it shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in the document is not accurate and complete and

(ii) Each oath or affirmation must be made by a representative duly authorized to bind the CPO or CTA.

(2) Be submitted consistent with the National Futures Association's electronic filing procedures.

(f) *Termination of reporting requirement.* All reporting persons shall continue to file such reports as are required under this section until the effective date of a Form 7W filed in accordance with the Commission's regulations.

(g) *Public records.* Reports filed pursuant to this section shall not be considered Public Records as defined in § 145.0 of this chapter.

8. In § 4.34, add paragraph (b)(4) to read as follows:

§ 4.34 General disclosures required.

* * * * *

(b) * * *

(4) If the commodity trading advisor may engage in swaps, the Risk Disclosure Statement must further state:

SWAPS TRANSACTIONS, LIKE OTHER FINANCIAL TRANSACTIONS, INVOLVE A VARIETY OF SIGNIFICANT RISKS. THE SPECIFIC RISKS PRESENTED BY A PARTICULAR SWAP TRANSACTION NECESSARILY DEPEND UPON THE TERMS OF THE TRANSACTION AND YOUR CIRCUMSTANCES. IN GENERAL,

HOWEVER, ALL SWAPS TRANSACTIONS INVOLVE SOME COMBINATION OF MARKET RISK, CREDIT RISK, FUNDING RISK, AND OPERATIONAL RISK.

HIGHLY CUSTOMIZED SWAPS TRANSACTIONS IN PARTICULAR MAY INCREASE LIQUIDITY RISK, WHICH MAY RESULT IN YOUR ABILITY TO WITHDRAW YOUR FUNDS BEING LIMITED. HIGHLY LEVERAGED TRANSACTIONS MAY EXPERIENCE SUBSTANTIAL GAINS OR LOSSES IN VALUE AS A RESULT OF RELATIVELY SMALL CHANGES IN THE VALUE OR LEVEL OF AN UNDERLYING OR RELATED MARKET FACTOR.

IN EVALUATING THE RISKS AND CONTRACTUAL OBLIGATIONS ASSOCIATED WITH A PARTICULAR SWAP TRANSACTION, IT IS IMPORTANT TO CONSIDER THAT A SWAP TRANSACTION MAY BE MODIFIED OR TERMINATED ONLY BY MUTUAL CONSENT OF THE ORIGINAL PARTIES AND SUBJECT TO AGREEMENT ON INDIVIDUALLY NEGOTIATED TERMS. THEREFORE, IT MAY NOT BE POSSIBLE TO MODIFY, TERMINATE, OR OFFSET YOUR OBLIGATIONS OR YOUR EXPOSURE TO THE RISKS ASSOCIATED WITH A TRANSACTION PRIOR TO ITS SCHEDULED TERMINATION DATE.

* * * * *

9. Appendix A is revised to read as follows:

Appendix A to Part 4—Form CPO–PQR

BILLING CODE P

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

CFTC Form CPO-PQR
OMB No.: 3038-XXXX

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using the Form CPO-PQR Template

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING OR REVIEWING THE REPORTING FORM. THE FAILURE TO ANSWER ALL QUESTIONS COMPLETELY AND ACCURATELY OR THE OMISSION OF REQUIRED INFORMATION MAY SEVERELY IMPACT YOUR ABILITY TO OPERATE AS A COMMODITY POOL OPERATOR.

This document is not a reporting form. Do not send this document to NFA. It is a template that you may use to assist in filing the electronic reporting form with the NFA at: http://www.nfa.futures.org.

You may fill out the template online and save and/or print it when you are finished or you can download the template and/or print it and fill it out later.

DEFINED TERMS

Words that are underlined in this form are defined terms and have the meanings contained in the Definitions of Terms section.

GENERAL

Read the Instructions and Questions Carefully

Please read the instructions and the questions in this Form CPO-PQR carefully. A question that is answered incorrectly because it was misread or misinterpreted can severely impact your ability to operate as a CPO.

In this Form CPO-PQR, "you" means the CPO.

Call the CFTC with Questions

If there is any question about whether particular information must be provided or about the manner in which particular information must be provided, contact the CFTC for clarification.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using the Form CPO-PQR Template

REPORTING INSTRUCTIONS

1. All CPOs Are Required to Complete and File the Form CPO-PQR Quarterly

All CPOs are required to complete and file a Form CPO-PQR for each Reporting Period during which they satisfy the definition of CPO and operate at least one Pool. The Form CPO-PQR is required to be filed with the NFA within 15 calendar days of the last day of the Reporting Period.

2. Only Certain Schedules of this Form CPO-PQR Are Required of Certain CPOs

Only certain Schedules of this Form CPO-PQR are required to be completed and filed by certain CPOs.

Schedule A
Schedule A must be completed and filed by each CPO for every Reporting Period during which they satisfy the definition of CPO and operate at least one Pool.

Part 1 of Schedule A surveys basic information about the reporting CPO. Part 2 of Schedule A asks for more specific information about each of the CPO's Pool's, including questions about the Pool's key relationship and about the Pool's investment positions.

Schedule B
Schedule B must be completed and filed annually by Mid-Sized CPOs. Mid-Sized CPOs must complete and file a Schedule B within 90 days of the close of each calendar year during which they satisfied the definition of Mid-Sized CPO and operated at least one Pool. A CPO that qualifies as a Mid-Sized CPO at any point during the calendar year must complete and file a separate Schedule B for each Pool that it operated during the calendar year.

Schedule B must be completed and filed quarterly by Large CPOs. Large CPOs must complete and file a Schedule B within 15 days of the close of the most recent Reporting Period during which they satisfied the definition of Large CPO and operated at least one Pool. A CPO that qualifies as a Large CPO at any point during the Reporting Period must complete and file a separate Schedule B for each Pool that it operated during the Reporting Period.

No Schedule B Filing Requirements
Any Mid-Sized CPO or Large CPO that (i) is registered with the SEC as an Investment Adviser, and (ii) operated only Pools that satisfy the definition of Private Fund during the calendar year or Reporting Period, respectively, will be deemed to have satisfied its Schedule B filing requirements by completing and filing Sections 1.b. and 1.c. of Form PF for each Pool that it operated during the calendar year or Reporting Period, respectively, in question.

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COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using the Form CPO-PQR Template

REPORTING INSTRUCTIONS (cont'd)

2. Only Certain Schedules of this Form CPO-PQR Are Required of Certain CPOs (cont'd)

Limited Schedule B Filing Requirements
However, any Mid-Sized CPO or Large CPO that (i) is registered with the SEC as an Investment Adviser, and (ii) operated any Pools that do not satisfy the definition of Private Fund during the calendar year or Reporting Period, respectively, will be required to complete and file a Schedule B for each Pool that it operated during the calendar year or Reporting Period, respectively, that did not satisfy the definition of a Private Fund. Schedule B will need to be completed in addition to the Mid-Sized CPO's or Large CPO's filing Form PF requirements.

Schedule B asks for information about each Pool's creditors, counterparties, borrowings and clearing mechanisms.

Schedule C
Schedule C must be completed and filed only by Large CPOs. Large CPOs must complete and file a Schedule C for every Reporting Period during which they satisfy the definition of a Large CPO and operate at least one Pool. A CPO that qualifies as a Large CPO at any point during the Reporting Period must complete and file a separate Part 2 of Schedule C for each Large Pool that it operated during the Reporting Period.

No Schedule C Filing Requirements
Any Large CPO that (i) is registered with the SEC as an Investment Adviser, and (ii) operated only Pools that satisfy the definition of Private Fund during the Reporting Period will be deemed to have satisfied its Schedule C filing requirements by completing and filing the applicable Sections 1 and 2 of Form PF for the Reporting Period in question.

Limited Schedule C Filing Requirements
However, any Large CPO that (i) is registered with the SEC as an Investment Adviser, and (ii) operated any Pools that do not satisfy the definition of Private Fund during the Reporting Period will be required to complete Parts 1 and 2 of Schedule C with respect to the Pool(s) that it operated during the Reporting Period that did not satisfy the definition of a Private Fund. For these Large CPOs, Part 1 of Schedule C will need to be completed with respect to all Pools that they operated during the Reporting Period that did not satisfy the definition of Private Fund, and Part 2 of Schedule C will need to be completed with respect to all Large Pools that they operated during the Reporting Period that did not satisfy the definition of Private Fund. These Schedule C filings will need to be completed in addition to the Large CPO's filing Form PF requirements.

Part 1 of Schedule C asks for information about the aggregated portfolios of the Pools that were not Private Funds that the Large CPO operated during the Reporting Period.

Part 2 of Schedule C asks for certain risk metrics about the Large Pools that were not Private Funds that the Large CPO operated during the Reporting Period.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using the Form CPO-PQR Template

REPORTING INSTRUCTIONS (cont'd)

3. The CPO May Be Required to Aggregate Information Concerning Certain Types of Pools

For purposes of determining whether a CPO meets the reporting thresholds for Schedules B and/or C of this Form CPO-PQR, the CPO must (1) aggregate all Parallel Pool Structures, Parallel Managed Accounts and Master Feeder Arrangements; and, (2) treat any Pool or Parallel Managed Account operated by any of its Affiliated Entities as though it was operated by the CPO.

For purposes of determining whether a Pool qualifies as a Large Pool for Schedule C of this Form CPO-PQR, the CPO must (1) aggregate all Pools that are part of the same Parallel Fund Structure or Master-Feeder Arrangement; (2) aggregate any Parallel Managed Accounts with the largest Pool to which that Parallel Managed Account relates; and, (3) treat any Pool or Parallel Managed Account operated by any of your Affiliated Entities as though it was operated by the CPO.

However, for the parts of Form CPO-PQR that request information about individual Pools, you must report aggregate information for Parallel Managed Accounts and Master Feeder Arrangements as if each were an individual Pool, but not Parallel Pools. Assets held in Parallel Managed Accounts should be treated as assets of the Pools with which they are aggregated.

4. The Form CPO-PQR Must Be Filed Electronically with NFA

All CPOs must file their Forms CPO-PQR electronically using NFA's EasyFile System. NFA's EasyFile System can be accessed through NFA's website at www.nfa.futures.org. You will use the same logon and password for filing your Form CPO-PQR as you would for any other EasyFile filings. Questions regarding your NFA ID# or your use of NFA's EasyFile system should be directed to the NFA. The NFA's contact information is available on its website.

5. All Figures Reported in U.S. Dollars

All questions asking for amounts or investments must be reported in U.S. dollars. Any amounts converted to U.S. dollars must use the conversion rate in effect on the Reporting Date.

6. Use of U.S. GAAP

All financial information in this Report must be presented and computed in accordance with GAAP consistently applied.

7. Oath and Affirmation

This Form CPO-PQR will not be accepted unless it is complete and contains an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; provided however, that is shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in this Report is not accurate and complete.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Definitions of Terms for the Form CPO-PQR Template

DEFINITIONS OF TERMS

Affiliated Entity: The term "Affiliated Entity" means any entity is an affiliate of another entity. An entity is an affiliate of another entity if the entity directly or indirectly controls, is controlled by or is under common control with the other entity.

Assets Under Management or AUM: The term "Assets Under Management" or "AUM" means the amount of all assets that are under the control of the CPO.

BP: The term "BP" means basis points.

Broker: The term "Broker" means any entity that provides clearing, prime brokerage or similar services to the Pool.

CDS: The term "CDS" means credit default swap.

CCP: The term "CCP" means a central counterparty or central clearing house, such as CC&G, CME Clearing, The Depository Trust & Clearing Corporation (including FICC, NSCC and Euro CCP), EMCF, Eurex Clearing, Fedwire, ICE Clear Europe, ICE Clear U.S., ICE Trust, LCH Clearnet Limited, LCH Clearnet SA, Options Clearing Corporation and SIX x-clear.

Commodity Futures Trading Commission or CFTC: The term "Commodity Futures Trading Commission" or "CFTC" means the United States Commodity Futures Trading Commission.

Commodity Pool or Pool: The term "Commodity Pool" or "Pool" has the same meaning as "commodity pool" as defined in section 1a(10) of the Commodity Exchange Act.

Commodity Pool Operator or CPO: The term "commodity pool operator" or "CPO" has the same meaning as "commodity pool operator" defined in section 1a(11) of the Commodity Exchange Act.

Commodity Trading Advisor or CTA: The term "commodity trading advisor" or "CTA" has the same meaning as "commodity trading adviser" as defined in section 1a(12) of the Commodity Exchange Act.

Feeder Fund: See Master Feeder Arrangement.

Financial Institution: The term "financial institution" means any of the following: (i) a bank or savings association, in each case as defined in the Federal Deposit Insurance Act; (ii) a bank holding company or financial holding company, in each case as defined in the Bank Holding Company Act of 1956; (iii) a savings and loan holding company, as defined in the Home Owners' Loan Act; (iv) a Federal credit union, State credit union or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act; or (v) a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971; or (vi) an entity chartered or otherwise organized outside the United States that engages in banking activities.

Form CPO-PQR: The term "Form CPO-PQR" means this Form CPO-PQR.

Form PF: The term "Form PF" refers to the SEC's Form PF.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Definitions of Terms for the Form CPO-PQR Template

DEFINITIONS OF TERMS (cont'd)

GAAP: The term "GAAP" means Generally Accepted Accounting Principles.

Investment Adviser: The term "Investment Adviser" has the same meaning as "investment adviser" as defined in Section 202(a)(11) of the Investment Advisers Act of 1940.

Large CPO: The term "Large CPO" refers to any CPO that had at least $1 billion in aggregated Pool Assets Under Management as of the close of business on any day during the Reporting Period.

Large Pool: The term "Large Pool" means any Pool that has a Net Asset Value individually, or in combination with any Parallel Pool Structure, of at least $500 million as of the close of business on any day during the Reporting Period.

Master Fund: See Master Feeder Arrangement.

Master-Feeder Arrangement: The phrase "Master Feeder Arrangement" means an arrangement in which one or more funds ("Feeder Funds") invest all or substantially all of their assets in a single fund ("Master Fund"). A fund would also be a Feeder Fund investing in a Master Fund for the purposes of this definition if it issued multiple classes or series of shares or interests and each class (or series) invests substantially all of its assets in shares (or other interests in) a single underlying Master Fund.

Mid-Sized CPO: The term "Mid-Sized CPO" refers to any CPO that had at least $150 million in aggregated Pool Assets Under Management as of the close of business on any day during the Reporting Period.

National Futures Association or NFA: The term "National Futures Association" or "NFA" refers to the National Futures Association, a registered futures association under Section 17 of the Commodity Exchange Act.

Negative OTE: The term "Negative OTE" means negative open trade equity.

Net Asset Value or NAV: The term "Net Asset Value" or "NAV" has the same meaning as "net asset value" as defined in Commission Rule 4.10(b).

Non-U.S. Financial Institution: A "non-U.S. Financial Institution" means any of the following Financial Institutions: (i) a Financial Institution chartered outside the United States; (ii) a subsidiary of a U.S. Financial Institution that is separately incorporated or otherwise organized outside the United States; or (iii) a branch or agency that resides in the United States but has a parent that is a Financial Institution chartered outside the United States.

OTC: The term "OTC" means over-the-counter.

Parallel Managed Account: The term "Parallel Managed Account" means any managed account or other pool of assets that the CPO operates and that pursues substantially the same investment objective and strategy and invests side-by-side in substantially the same assets as the identified Pool.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Definitions of Terms for the Form CPO-PQR Template

DEFINITIONS OF TERMS (cont'd)

Parallel Pool Structure: The term "Parallel Pool Structure" means any structure in which one or more Pools pursues substantially the same investment objective and strategy and invests side by side in substantially the same assets as another Pool.

Private Fund: The term "Private Fund" has the same meaning as "private fund" as defined in Form PF.

Positive OTE: The term "Positive OTE" means positive open trade equity.

Reporting Date: The term "Reporting Date" means the last calendar day of the Reporting Period for which this Form CPO-PQR is required to be completed and filed. For example, the Reporting Date for the first calendar quarter of a year is March 31; the Reporting Date for the second calendar quarter is June 30.

Reporting Period: The term "Reporting Period" means any of the individual calendar quarters (ending March 31, June 30, September 30, and December 31).

Trading Manager: The term "Trading Manager" means any entity or individual with sole or partial authority to invest Pool assets or to allocate Pool assets to other managers or investee pools (including cash management firms). CTAs and other CPOs can be Trading Managers; however, a CPO should not identify itself as a Trading Manager.

Secured Borrowing: The term "Secured Borrowing" means obligations for borrowed money in respect of which the borrower has posted collateral or other credit support. For purposes of this definition, repos are secured borrowings.

Securities and Exchange Commission or SEC: The term "Securities and Exchange Commission" or "SEC" means the United States Securities and Exchange Commission.

Side Arrangements and Side Letters: The term "Side Arrangements" or the term "Side Letters" means any arrangement that is extended to less than 100% of the Pool's participants.

U.S. Financial Institution: The term "U.S. Financial Institution" means any of the following Financial Institutions: (i) a Financial Institution chartered in the United States (whether federally-chartered or state-chartered); (ii) a subsidiary of a Non-U.S. Financial Institution that is separately incorporated or otherwise organized in the United States; or (iii) a branch or agency that resides outside the United States but has a parent that is a Financial Institution chartered in the United States.

Unsecured Borrowing: The term "Unsecured Borrowing" means obligations for borrowed money in respect of which the borrower has not posted collateral or other credit support.

VaR: The term "VaR" means value at risk.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule A

INSTRUCTIONS FOR COMPLETING SCHEDULE A

Every CPO is required to complete and file Schedule A of this Form CPO-PQR. This Schedule A must be completed for every Reporting Period during which the CPO operated at least one Pool. Part 1 of Schedule A asks for information about the CPO. Part 2 of Schedule A asks for information about each individual Pool that the CPO operated during the Reporting Period. CPOs must complete and file a separate Part 2 for each Pool they operated any time during the Reporting Period.

Unless otherwise specified in a particular question, all information provided in this Schedule A should be accurate as of the Reporting Date.

PART 1 · INFORMATION ABOUT THE CPO

1. CPO INFORMATION

Provide the following general information concerning the CPO:

a. CPO's Name:	
b. CPO's NFA ID#:	
c. Person to contact concerning this Form CPO-PQR:	
d. CPO's chief compliance officer:	
e. Total number of employees of the CPO:	
f. Total number of equity holders of the CPO:	
g. Total number of Pools operated by the CPO:	

2. CPO ASSETS UNDER MANAGEMENT

Provide the following information concerning the amount of Assets Under Management by the CPO:

a. CPO's Total Assets Under Management:	
b. CPO's Total Net Assets Under Management:	
c. CPO's Total Pool Assets Under Management:	
d. CPO's Total Pool Net Assets Under Management:	

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule A

PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO

REMINDER: The CPO must complete and file a separate Part 2 for each Pool that the CPO operated during the Reporting Period.

3. POOL INFORMATION
Provide the following general information concerning the Pool:

a. Pool's name:

b. Pool's NFA ID#:

c. Under the laws of what state or country is the Pool organized:

d. On what date does the Pool's fiscal year end:

e. Is this Pool a Private Fund? Yes ☐ No ☐

f. List the English name of each Foreign Financial Regulatory Authority and the country with which the Pool is registered:

Foreign Financial Regulatory Authority	Country

g. Is this a Master Fund in a Master-Feeder Arrangement? Yes ☐ No ☐

If "Yes," provide the name and NFA ID# of each Feeder Fund investing in this Pool:

Feeder Fund	NFA ID#

h. Is this a Feeder Fund in a Master-Feeder Arrangement? Yes ☐ No ☐

If "Yes," provide the name and NFA ID# of the Master Fund in which this Pool invests:

Master Fund	NFA ID#

i. If this Pool invests in other Pools, what is the maximum number of investee pool tiers?

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

4. POOL THIRD PARTY ADMINISTRATORS
Provide the following information concerning the Pool's third party administrator(s):

a. Does the CPO use third party administrators for the Pool? Yes ☐ No ☐

If "Yes," provide the following information for each third party administrator:

i. Name of the administrator: _____

ii. NFA ID# of administrator: _____

iii. Address of the administrator: _____

iv. Telephone number of the administrator: _____

v. Starting date of the relationship with the administrator: _____

vi. Services performed by the administrator:

Preparation of Pool financial statements: ☐ Maintenance of the Pool's books and records: ☐

Calculation of Pool's performance: ☐ Other _____: ☐

b. What percentage of the Pool's Assets Under Management is valued by a third party administrator, or similar entity, that is independent of the CPO?

_____ %

If the number entered is greater than "0," provide the following information:

Name(s) of the third party(-ies): _____

5. POOL BROKERS
Provide the following information concerning the Pool's Broker(s):

a. Does the CPO use Brokers for the Pool? Yes ☐ No ☐

If "Yes," provide the following information for each Broker:

i. Name of the Broker: _____

ii. NFA ID# of Broker: _____

iii. Address of Broker: _____

TEMPLATE: DO NOT SEND TO NFA

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

5. POOL CARRYING BROKERS (cont'd)

iv. Telephone number of the Broker: _____

v. Starting date of the relationship with the Broker: _____

vi. Services performed by the Broker:

Clearing services for the Pool: ☐ Custodian services for some or all Pool assets: ☐

Prime brokerage services for the Pool: ☐ Other _____ : ☐

6. POOL TRADING MANAGERS

Provide the following information concerning the Pool's Trading Manager(s):

a. Has the CPO authorized Trading Managers to invest or allocate some or all of the Pool's Assets Under Management? Yes ☐ No ☐

If "Yes," provide the following information for each Trading Manager:

i. Name of the Trading Manager: _____

ii. NFA ID# of the Trading Manager: _____

iii. Address of the Trading Manager: _____

iv. Telephone number of the Trading Manager: _____

v. Starting date of the relationship with the Trading Manager: _____

vi. What percentage of the Pool's Assets Under Management does the Trading Manager have authority to invest or allocate? _____ %

7. POOL CUSTODIANS

Provide the following information concerning the Pool's custodian(s):

a. Does the CPO use custodians to hold some or all of the Pool's Assets Under Management?

Yes ☐ No ☐

If "Yes," provide the following information for each custodian:

i. Name of the custodian: _____

TEMPLATE: DO NOT SEND TO NFA

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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template - Schedule A

PART 2 - INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

7. POOL CUSTODIANS (cont'd)

ii. NFA ID# of the custodian: _____

iii. Address of the custodian: _____

iv. Telephone number of the custodian: _____

v. Starting date of the relationship with the custodian: _____

vi. What percentage of the Pool's Assets Under Management is held by the custodian? _____ %

8. POOL AUDITOR

Provide the following information concerning the Pool's auditor(s):

a. Does the CPO have the Pool's financial statements audited? Yes ☐ No ☐

If "Yes," provide the following information:

i. Is the audit conducted in accordance with GAAP? Yes ☐ No ☐

ii. Name of the auditing firm: _____

iii. Address of the auditing firm: _____

iv. Telephone number of the auditing firm: _____

v. Starting date of the relationship with the auditing firm: _____

b. Are the Pool's audited financial statements distributed to the Pool's participants? Yes ☐ No ☐

9. POOL MARKETERS

Provide the following information concerning the Pool's marketer(s):

a. Does the CPO use the services of third parties to market participations in the Pool? Yes ☐ No ☐

If "Yes," provide the following information for each marketing firm:

i. Name of the marketing firm: _____

ii. Address of the marketing firm: _____

iii. Telephone number of the marketing firm: _____

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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule A

PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

9. POOL MARKETERS (cont'd)

iv. Starting date of the relationship with the marketing firm: _____

v. Address of any website used by the marketing firm to market participations in the Pool: _____

10. POOL'S STATEMENT OF CHANGES CONCERNING ASSETS UNDER MANAGEMENT

Provide the following information concerning the Pool's activity during the Reporting Period. For the purposes of this question:

(i) The Assets Under Management and Net Asset Value at the beginning of the Reporting Period are considered to be the same as the assets under management and Net Asset Value at the end of the previous Reporting Period, in accordance with Regulation 4.25(a)(7)(A).

(ii) The additions to the Pool include all additions whether voluntary or involuntary in accordance with Regulation 4.25(a)(7)(B).

(iii) The withdrawals and redemptions from the Pool include all withdrawals or redemptions whether voluntary or not, in accordance with Regulation 4.25(a)(7)(C).

(iv) The Pool's Assets Under Management and Net Asset Value on the Reporting Date must be calculated by adding or subtracting from the Assets Under Management and Net Asset Value at the beginning of the Reporting Period, respectively, any additions, withdrawals, redemptions and net performance, as provided in Regulation 4.25(a)(7)(E).

a. Pool's Assets Under Management at the beginning of the Reporting Period: _____

b. Pool's Net Asset Value at the beginning of the Reporting Period: _____

c. Pool's net income during the Reporting Period: _____

d. Additions to the Pool during the Reporting Period: _____

e. Withdrawals and Redemptions from the Pool during the Reporting Period: _____

f. Pool's Assets Under Management on the Reporting Date: _____

g. Pool's Net Asset Value on the Reporting Date: _____

TEMPLATE: DO NOT SEND TO NFA

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

11. POOL'S MONTHLY RATES OR RETURN

Provide the Pool's monthly rate of return for each month that the Pool has operated. The Pool's monthly rate of return should be calculated in accordance with Regulation 4.25(a)(7)(F). Enter "NT" to indicate that the Pool did not trade during a particular month. Provide the Pool's annual rate of return for the appropriate year in the row marked "Annual."

	2011	2010	2009	2008	2007	2006	2005
Jan.							
Feb.							
March							
June							
July							
August							
Sept.							
Oct.							
Nov.							
Dec.							
ANNUAL							

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

12. POOL SCHEDULE OF INVESTMENTS

Provide the Pool's investments in each of the subcategories listed under the following seven headings: (1) Cash; (2) Equities; (3) Alternative Investments; (4) Fixed Income; (5) Derivatives; (6) Options; and (7) Funds. First, determine how the Pool's investments should be allocated among each of these seven categories. Once you have determined how the Pool's investments should be allocated, enter the dollar value of the Pool's total investment in each applicable category on the top, boldfaced line. For example, under the "Cash" heading, the Pool's total investment should be listed on the line reading "Total Cash." After the top, boldfaced line is completed, proceed to the subcategories. For each subcategory, determine whether the Pool has investments that equal or exceed 5% of the Pool's Net Asset Value. If so, provide the dollar value of each such investment in the appropriate subcategory. If the dollar value of any investment in a subcategory equals or exceeds 5% of the Pool's Net Asset Value, you must itemize the investments in that subcategory.

	Long	Short
CASH		
Total Cash		
At Carrying Broker		
At Bank		
EQUITIES		
Total Listed Equities		
Stocks		
a. Energy and Utilities		
b. Technology		
c. Media		
d. Telecommunication		
e. Healthcare		
f. Consumer Services		
g. Business Services		
h. Issued by Financial Institutions		
i. Consumer Goods		
j. Industrial Materials		
Exchange Traded Funds		
American Deposit Receipts		

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

EQUITIES	Long	Short
Other		
Total Unlisted Equities		
Unlisted Equities Issued by Financial Institutions		

ALTERNATIVE INVESTMENTS	Long	Short
Total Alternative Investments		
Real Estate		
a. Commercial		
b. Residential		
Private Equity		
Venture Capital		
Forex		
Spot		
a. Total Metals		
I. Gold		
b. Total Energy		
I. Crude oil		
II. Natural gas		
III. Power		
c. Other		
Loans to Affiliates		
Promissory Notes		
Physicals		
a. Total Metals		
I. Gold		
b. Agriculture		

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

ALTERNATIVE INVESTMENTS	Long	Short
Physicals (cont'd)		
c. Total Energy		
I. Crude oil		
II. Natural gas		
III. Power		
Other		

FIXED INCOME	Long	Short
Total Fixed Income		
Notes, Bonds and Bills		
a. Corporate		
I. Investment grade		
II. Non-investment grade		
b. Municipal		
c. Government		
I. U.S. Treasury securities		
II. Agency securities		
III. Foreign (G10 countries)		
IV. Foreign (all other)		
d. Govn't Sponsored		
e. Convertible		
I. Investment grade		
II. Non-investment grade		
Certificates of Deposit		
a. U.S.		
b. Foreign		

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

FIXED INCOME	Long	Short
Asset Backed Securities		
a. Mortgage Backed Securities		
I. Commercial Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
II. Commercial Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
III. Residential Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
IV. Residential Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
V. Agency Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
VI. Agency Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
b. CDO Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		

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Form CPO-PQR Template · Schedule A

PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

FIXED INCOME	Long	Short
Asset Backed Securities (cont'd)		
c. CDO Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
d. CDO Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
e. CLOs Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
f. CLO Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
g. Credit Card Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
h. Credit Card Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
i. Auto-Loan Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

FIXED INCOME	Long	Short
Asset Backed Securities (cont'd)		
j. Auto-Loan Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
k. Other		
Senior or higher		
Mezzanine		
Junior/Equity		
Repos		
Reverse Repos		

DERIVATIVES	Positive OTE	Negative OTE
Total Derivatives		
Futures		
a. Indices		
I. Equity		
II. Commodity		
b. Metals		
I. Gold		
c. Agriculture		
d. Energy		
I. Crude oil		
II. Natural gas		
III. Power		
e. Interest Rate		
f. Currency		

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

DERIVATIVES	Positive OTE	Negative OTE
Futures (cont'd)		
g. Related to Financial Institutions		
h. Other		
Forwards		
Swaps		
a. Interest Rate Swap		
b. Equity/Index Swap		
c. Dividend Swap		
d. Currency Swap		
e. Variance Swap		
f. Credit Default Swap		
I. Single name CDS		
i. Related to Financial Institutions		
II. Index CDS		
III. Exotic CDS		
g. OTC Swap		
I. Related to Financial Institutions		
h. Total Return Swap		
i. Other		

OPTIONS	Long Option Value	Short Option Value
Total Options		
Futures		
a. Indices		
I. Equity		
II. Commodity		

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

OPTIONS	Long Option Value	Short Option Value
Futures (cont'd)		
b. Metals		
c. Agriculture		
d. Energy		
e. Interest Rate		
f. Currency		
g. Related to Financial Institutions		
h. Other		
Stocks		
a. Related to Financial Institutions		
Customized/OTC		
Physicals		
a. Metals		
I. Gold		
b. Agriculture		
c. Currency		
d. Energy		
I. Crude oil		
II. Natural gas		
III. Power		
e. Other		

FUNDS	Long
Total Funds	
Mutual Fund	

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

FUNDS

	Long
i. U.S.	
ii. Foreign	
Hedge Fund	
Equity Fund	
Money Market Fund	
Private Equity Fund	
REIT	
Other	

ITEMIZATION

a. If the dollar value of any investment in any subcategory under the heading "Equities," "Alternative Investments" or "Fixed Income" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/ Short	Cost	Fair Value	Year-to-Date Gain (Loss)

b. If the dollar value of any investment in any subcategory under the heading "Derivatives" or "Options" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/ Short	OTE	Counterparty	Year-to-Date Gain (Loss)

c. If the dollar value of any investment in any subcategory under the heading "Funds" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Fund Name	Fund Type	Fair Value	Year-to-Date Gain (Loss)

13. POOL SUBSCRIPTIONS AND REDEMPTIONS

Provide the following information concerning subscriptions to and redemptions from the Pool during the Reporting Period.

a. Total Pool subscriptions by participants during the Reporting Period:

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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule A

PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO (cont'd)

13. POOL SUBSCRIPTIONS AND REDEMPTIONS (cont'd)

b. Total Pool redemptions by participants during the Reporting Period: ☐

c. Are any Pool participants or share classes currently below the Pool's high water mark?

Yes ☐ No ☐

If "Yes," provide the following information:

i. What is the percentage of participants below the Pool's high water mark as of the Reporting Date? ☐ %

ii. What is the weighted average percentage of participants below the Pool's high water mark as of the Reporting Date? ☐ %

d. Has the Pool imposed a halt or any other material limitation on redemptions during the Reporting Period?

Yes ☐ No ☐

If "Yes," provide the following information:

i. On what date was the halt or material limitation imposed? ☐

ii. If the halt or material limitation has been lifted, on what date was it lifted? ☐

iii. What disclosure was provided to participants to notify them that the halt or material limitation was being imposed? What disclosure was provided to participants to notify them that the halt or material limitation was being lifted?

☐

iv. On what date(s) was this disclosure provided? ☐

v. Briefly explain the halt or material limitation(s) on redemptions and the reason for such halt or material limitation(s):

☐

– This Completes Schedule A of Form CPO-PQR –

TEMPLATE: DO NOT SEND TO NFA

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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template - Schedule B

INSTRUCTIONS FOR COMPLETING SCHEDULE B

A CPO is only required to complete and file Schedule B of this Form CPO-PQR if at any point during the calendar year the CPO qualified as a Mid-Sized CPO or Large CPO.

Schedule B must be completed and filed annually by Mid-Sized CPOs. Mid-Sized CPOs must complete and file a Schedule B within 90 days of the close of each calendar year during which they satisfied the definition of Mid-Sized CPO and operated at least one Pool. A CPO that qualifies as a Mid-Sized CPO at any point during the calendar year must complete and file a separate Schedule B for each Pool that it operated during the calendar year.

Schedule B must be completed and filed annually by Large CPOs. Large CPOs must complete and file a Schedule B within 15 days of the close of the most recent Reporting Period during which they satisfied the definition of Large CPO and operated at least one Pool. A CPO that qualifies as a Large CPO at any point during the Reporting Period must complete and file a separate Schedule B for each Pool that it operated during the Reporting Period.

Notwithstanding the above paragraph, certain Mid-Sized CPOs and Large CPOs that are also registered as Investment Advisers with the SEC may be deemed to have satisfied their Schedule B filing requirements by completing and filing Sections 1.b. and 1.c. of Form PF. Whether a Mid-Sized CPO or Large CPO has satisfied its Schedule B filing requirements will depend upon the type of Pools it operated during the calendar year or Reporting Period, respectively. Refer to the instructions of this Form CPO-PQR to determine whether you are required to complete this Schedule B and, if you are, how frequently you are required to file.

Unless otherwise specified in a particular question, all information provided in this Schedule B should be accurate as of the Reporting Date for all Large CPOs and accurate as of December 31 of each calendar year for all Mid-Sized CPOs.

REMINDER: A CPO that qualified as a Mid-Sized CPO at any point during the calendar year or Large CPO at any point during the Reporting Period must complete and file a separate Schedule B for each Pool that it operated during the calendar year or Reporting Period, respectively, that did not satisfy the definition of Private Fund.

DETAILED INFORMATION ABOUT THE POOLS OPERATED BY MID-SIZED CPOs AND LARGE CPOs

In lieu of filing this Schedule B, the CPO has completed and filed Sections 1.b. and 1.c. of Form PF for the following Pools:

☐[Commodity Pool] ☐[Commodity Pool]

1. POOL INFORMATION

Provide the following general information concerning the Pool:

a. Pool's name: _____

b. Pool's NFA ID#: _____

TEMPLATE: DO NOT SEND TO NFA

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Form CPO-PQR Template · Schedule B

DETAILED INFORMATION ABOUT THE POOLS OPERATED BY MID-SIZED CPOs AND LARGE CPOs (cont'd)

1. POOL INFORMATION (cont'd)

c. Does the Pool have a single primary investment strategy or multiple strategies?

☐ Single Primary Strategy ☐ Multiple Strategies

d. Indicate which of the strategies below best describe the investment strategy that the Pool uses. For each strategy selected, estimate the percentage of the Pool's Net Asset Value represented by that strategy:

☐ [Strategy] _____% ☐ [Strategy] _____%
☐ [Strategy] _____% ☐ [Strategy] _____%
☐ [Strategy] _____% ☐ [Strategy] _____%
☐ [Strategy] _____% ☐ [Strategy] _____%

e. Provide the approximate percentage of the Pool's portfolio that is managed using quantitative trading algorithms or quantitative techniques to select investments. Do not include the use of algorithms used solely for trade execution:

☐ 0% ☐ 51-75%
☐ 1-10% ☐ 76-99%
☐ 10-25% ☐ 100%
☐ 26-50%

f. Provide the following information concerning the Pool's participant concentration. Beneficial owners of Pool participations that are Affiliated Entities should be treated as a single participant:

i. Total number of participants in the Pool: ☐

ii. Percentage of the Pool that is beneficially owned by the five largest participants: ☐ %

2. POOL BORROWINGS AND TYPES OF CREDITORS

Provide the following information concerning the Pool's borrowings and types of creditors. Include all Secured Borrowings and Unsecured Borrowings, but not synthetic borrowings. The percentages entered below for questions 2.a., 2.b. and 2.c. should total 100%:

a. Total Borrowings (dollar amount): ☐
b. Percentage borrowed from U.S. Financial Institutions: ☐
c. Percentage borrowed from non-U.S. Financial Institutions: ☐
d. Percentage borrowed from creditors that are not Financial Institutions: ☐

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Form CPO-PQR Template · Schedule B

DETAILED INFORMATION ABOUT THE POOLS OPERATED BY MID-SIZED CPOs AND LARGE CPOs (cont'd)

2. POOL BORROWINGS AND TYPES OF CREDITORS (cont'd)

e. If the Pool owed any creditor an amount greater than or equal to 5% of the Pool's Net Asset Value, identify the creditor and provide the amount owed:

☐Barclays	$_____	☐JP Morgan	$_____
☐Bank of America/Merrill Lynch	$_____	☐Mitsubishi UFJ Financial Grp.	$_____
☐Bank of New York	$_____	☐MF Global	$_____
☐BNP Paribas	$_____	☐Morgan Stanley	$_____
☐Calyon	$_____	☐New Edge	$_____
☐Cargill Financial Markets	$_____	☐Nomura	$_____
☐Citigroup	$_____	☐Prudential	$_____
☐Credit Agricole	$_____	☐Royal Bank of Canada	$_____
☐Credit Suisse	$_____	☐Royal Bank of Scotland	$_____
☐Deutsche Bank	$_____	☐Société Générale	$_____
☐Dresdner/Commerz	$_____	☐State Street	$_____
☐Fidelity	$_____	☐UBS	$_____
☐Goldman Sachs	$_____	☐Other:	
☐HSBC	$_____		

3. POOL COUNTERPARTY CREDIT EXPOSURE

Provide the following information about the Pool's counterparty credit exposure. Do not include CCPs as counterparties and aggregate all Affiliated Entities as a single group for purposes of this question.

Your responses should take into account (i) mark-to-market gains and losses on derivatives, (ii) margin posted to the counterparty (for subparagraph 3.b.) or margin posted by the counterparty (for subparagraph 3.c.), and (iii) any loans or loan commitments. Your responses should not take into account: (i) assets that the counterparty is holding in custody on your behalf; (ii) derivative transactions that have been executed but not settled; (iii) margin held in a customer omnibus account at a CCP; or (iv) holdings of debt or equity securities issued by the counterparty.

a. Provide the Pool's aggregate net counterparty credit exposure, measured in dollars: ☐

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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

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DETAILED INFORMATION ABOUT THE POOLS OPERATED BY MID-SIZED CPOs AND LARGE CPOs (cont'd)

3. POOL COUNTERPARTY CREDIT EXPOSURE (cont'd)

b. Identify the five trading counterparties to which the Pool has the greatest net counterparty credit exposure, measured as a percentage of the Pool's Net Asset Value. Beside each of the counterparties identified, provide the Pool's exposure to that counterparty as a percentage of the Pool's Net Asset Value:

☐Barclays	_____%	☐JP Morgan	_____%
☐Bank of America/Merrill Lynch	_____%	☐Mitsubishi UFJ Financial Grp.	_____%
☐Bank of New York	_____%	☐MF Global	_____%
☐BNP Paribas	_____%	☐Morgan Stanley	_____%
☐Calyon	_____%	☐New Edge	_____%
☐Cargill Financial Markets	_____%	☐Nomura	_____%
☐Citigroup	_____%	☐Prudential	_____%
☐Credit Agricole	_____%	☐Royal Bank of Canada	_____%
☐Credit Suisse	_____%	☐Royal Bank of Scotland	_____%
☐Deutsche Bank	_____%	☐Société Générale	_____%
☐Dresdner/Commerz	_____%	☐State Street	_____%
☐Fidelity	_____%	☐UBS	_____%
☐Goldman Sachs	_____%	☐Other:	
☐HSBC	_____%		

i. Below are the firms that you identified in question 3.a. If the Pool's trading counterparty is an Affiliated Entity of the firm you identified, check the box beside the firm's name:

☐[Counterparty firm]	☐[Counterparty firm]
☐[Counterparty firm]	☐[Counterparty firm]
☐[Counterparty firm]	

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DETAILED INFORMATION ABOUT THE POOLS OPERATED BY MID-SIZED CPOs AND LARGE CPOs (cont'd)

3. POOL COUNTERPARTY CREDIT EXPOSURE (cont'd)

c. Identify the five trading counterparties that have the greatest net counterparty credit exposure to the Pool, measured in dollars. Beside each of the counterparties identified, provide each counterparty's exposure to the Pool.

☐Barclays	$_____	☐JP Morgan	$_____
☐Bank of America/Merrill Lynch	$_____	☐Mitsubishi UFJ Financial Grp.	$_____
☐Bank of New York	$_____	☐MF Global	$_____
☐BNP Paribas	$_____	☐Morgan Stanley	$_____
☐Calyon	$_____	☐New Edge	$_____
☐Cargill Financial Markets	$_____	☐Nomura	$_____
☐Citigroup	$_____	☐Prudential	$_____
☐Credit Agricole	$_____	☐Royal Bank of Canada	$_____
☐Credit Suisse	$_____	☐Royal Bank of Scotland	$_____
☐Deutsche Bank	$_____	☐Société Générale	$_____
☐Dresdner/Commerz	$_____	☐State Street	$_____
☐Fidelity	$_____	☐UBS	$_____
☐Goldman Sachs	$_____	☐Other:	
☐HSBC	$_____		

i. Below are the firms that you identified in question 3.c. If the Pool's trading counterparty is an Affiliated Entity of the firm you identified, check the box beside the firm's name:

☐[Counterparty firm]	☐[Counterparty firm]
☐[Counterparty firm]	☐[Counterparty firm]
☐[Counterparty firm]	

d. Identify the three types of unregulated entities to which the Pool has the greatest net counterparty exposure, measured as a percentage of the Pool's Net Asset Value:

☐Hedge Fund	_____%	☐Securitized Asset Fund	_____%
☐Private Equity Fund	_____%	☐Other Private Fund	_____%
☐Liquidity Fund	_____%	☐Sovereign Wealth Fund	_____%
☐Venture Capital Fund	_____%	☐Other:	
☐Real Estate Fund	_____%		

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DETAILED INFORMATION ABOUT THE POOLS OPERATED BY MID-SIZED CPOs AND LARGE CPOs (cont'd)

3. POOL COUNTERPARTY CREDIT EXPOSURE (cont'd)

i. Below are the firms that you identified in question 3.d. If the Pool's counterparty is an Affiliated Entity of the firm you identified, check the box beside the firm's name:
☐[Counterparty firm] ☐[Counterparty firm]
☐[Counterparty firm]

4. POOL TRADING AND CLEARING MECHANISMS

Provide the following information concerning the Pool's use of trading and clearing mechanisms. For purposes of this question: (i) a trade includes any transaction, irrespective of whether entered into on a bilateral basis, on exchange, or through a trading facility or other system, and (ii) transactions for which margin is held in a customer omnibus account at a CCP should be considered cleared by a CCP.

Trading and Clearing of Derivatives

a. For each of the following types derivatives that are traded by the Pool, estimate the percentage (in terms of notional value) of the Pool's activity that is traded on a regulated exchange as opposed to over-the-counter. The percentages entered for each row should total 100%:

	Traded on a Regulated Exchange	Traded Over-the-Counter
Credit derivatives:		
Interest rate derivatives:		
Commodity derivatives:		
Equity derivatives:		
Foreign exchange derivatives:		
Asset backed securities derivatives:		
Other derivatives:		

b. For each of the following types derivatives that are traded by the Pool, estimate the percentage (in terms of notional value) of the Pool's activity that is cleared by a CCP as opposed to being transacted bilaterally (not cleared by a CCP). The percentages entered for each row should total 100%:

	Cleared by a CCP	Transacted Bilaterally
Credit derivatives:		
Interest rate derivatives:		
Commodity derivatives:		
Equity derivatives:		
Foreign exchange derivatives:		
Asset backed securities derivatives:		
Other derivatives:		

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DETAILED INFORMATION ABOUT THE POOLS OPERATED BY MID-SIZED CPOs AND LARGE CPOs (cont'd)

4. POOL TRADING AND CLEARING MECHANISMS (cont'd)

Trading and Clearing of Securities

c. For each of the following types securities that are traded by the Pool, estimate the percentage (in terms of market value) of the Pool's activity that is traded on a regulated exchange as opposed to over-the-counter. The percentages entered for each row should total 100%:

	Traded on a Regulated Exchange	Traded Over-the-Counter
Equity securities:		
Debt securities:		

d. For each of the following types securities that are traded by the Pool, estimate the percentage (in terms of market value) of the Pool's activity that is cleared by a CCP as opposed to being transacted bilaterally (not cleared by a CCP). The percentages entered for each row should total 100%:

	Cleared by a CCP	Transacted Bilaterally
Equity securities:		
Debt securities:		

Clearing of Repos

e. For the repo trades into which the Pool has entered, estimate the percentages (in terms of market value) of the Pool's repo trades that are cleared by a CCP, that are transacted bilaterally (not cleared by a CCP) and that constitute a tri-party repo. Tri-party repo is any repo where the collateral is held at a custodian (not a CCP) that acts as a third party agent to both repo buyer and the repo seller. The percentages entered should total 100%:

	Cleared by a CCP	Transacted Bilaterally	Tri-Party Repo
Repo			

5. VALUE OF THE POOL'S AGGREGATED DERVATIVE POSITIONS

Provide the aggregate value of all derivative positions of the Pool. The value of any derivative should be its total gross notional value, except that the value of an option should be its delta adjusted notional value. Do not net long and short positions.

Aggregate value of derivative positions: [ ]

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DETAILED INFORMATION ABOUT THE POOLS OPERATED BY MID-SIZED CPOs AND LARGE CPOs (cont'd)

6. MISCELLANEOUS

In the space below, provide explanations to clarify any assumptions that you made in responding to any question in Schedule B of this Form CPO-PQR. Assumptions must be in addition to, or reasonably follow from, any instructions or other guidance provided in, or in connection with, Schedule B of this Form CPO-PQR. If you are aware of any instructions or other guidance that may require a different assumption, provide a citation and explain why that assumption is not appropriate for this purpose.

Question Number	Explanation

– This Completes Schedule B of Form CPO-PQR –

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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template - Schedule C

INSTRUCTIONS FOR COMPLETING SCHEDULE C

A CPO is only required to complete and file Schedule C of this Form CPO-PQR if at any point during the Reporting Period the CPO qualified as a Large CPO.

Schedule C must be completed and filed only by Large CPOs. Large CPOs must complete and file a Schedule C for every Reporting Period during which they satisfy the definition of a Large CPO and operate at least one Pool. A CPO that qualifies as a Large CPO at any point during the Reporting Period must complete and file a separate Part 2 of Schedule C for each Large Pool that it operated during the Reporting Period.

No Schedule C Filing Requirements
Any Large CPO that (i) is registered with the SEC as an Investment Adviser, and (ii) operated only Pools that satisfy the definition of Private Fund during the Reporting Period will be deemed to have satisfied its Schedule C filing requirements by completing and filing Section 2 of Form PF for the Reporting Period in question.

Limited Schedule C Filing Requirements
However, any Large CPO that (i) is registered with the SEC as an Investment Adviser, and (ii) operated any Pools that do not satisfy the definition of Private Fund during the Reporting Period will be required to complete Parts 1 and 2 of Schedule C with respect to the Pool(s) that it operated during the Reporting Period that did not satisfy the definition of a Private Fund. For these Large CPOs, Part 1 of Schedule C will need to be completed with respect to all Pools that they operated during the Reporting Period that did not satisfy the definition of Private Fund, and Part 2 of Schedule C will need to be completed with respect to all Large Pools that they operated during the Reporting Period that did not satisfy the definition of Private Fund. These Schedule C filings will need to be completed in addition to the Large CPO's filing Form PF requirements.

Refer to the instructions of this Form CPO-PQR to determine whether you are required to complete this Schedule C.

Part 1 of Schedule C asks the Large CPO to provide information on the aggregated investments of all Pools that are not Private Funds that were operated by the Large CPO during the most recent Reporting Period. Any Large CPO who has completed and filed Section 2 of the SEC's Form PF for the Private Funds it operated during this Reporting Period should be sure to answer Part 1 only with respect to the Pools that are not Private Funds.

Part 2 of Schedule C asks the Large CPO to provide certain risk metrics for each Large Pool that is not a Private Fund that was operated by the Large CPO during the most recent Reporting Period. A Large CPO must complete and file a separate Part 2 of Schedule C for each Large Pool that is not a Private Fund that the Large CPO operated during the most recent Reporting Period. Any Large CPO who has completed and filed Section 2 of the SEC's Form PF for the Private Funds it operated during this Reporting Period should be sure to complete and file a Part 2 only for its Large Pools that are not Private Funds.

Unless otherwise specified in a particular question, all information provided in this Schedule C should be accurate as of the Reporting Date.

TEMPLATE: DO NOT SEND TO NFA

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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 1 · INFORMATION ABOUT THE AGGREGATED POOL ASSETS OF LARGE CPOs (cont'd)

In lieu of filing this Schedule C, the CPO has completed and filed Section 2 of Form PF for the following Pools:
☐[Commodity Pool] ☐[Commodity Pool]

1. GEOGRAPHICAL BREAKDOWN OF POOLS' INVESTMENTS

Provide a geographical breakdown of the investments (by percentage of aggregated Assets Under Management) of all Pools that are not Private Funds that were operated by the Large CPO during the most recent Reporting Period. Except for foreign exchange derivatives, investments should be allocated by the jurisdiction of the organization of the issuer or counterparty. For foreign exchange derivatives, investments should be allocated by the country to whose currency the Pool has exposure through the derivative. The percentages entered below should total 100%.

United States	_____%	China (incl. Hong Kong)	_____%
Canada	_____%	India	_____%
Mexico	_____%	Japan	_____%
Brazil	_____%	Republic of Korea	_____%
Other Americas	_____%	Middle East	_____%
EEA	_____%	Other Asia or Pacific	_____%
Russia	_____%	South Africa	_____%
Other Europe	_____%	Other Africa	_____%
Australia	_____%		

2. TURNOVER RATE OF AGGREGATE PORTFOLIO OF POOLS

Provide the turnover rate by volume for the aggregate portfolio of all Pools that are not Private Funds and that were operated by the Large CPO during the most recent Reporting Period. The turnover rate should be calculated as follows:

Divide the lesser of amounts of the Pools' purchases or sales of assets for the month by the average of the value of the Pools' assets during the month. Calculate the "monthly average" by totaling the values of Pools' assets as of the beginning and the end of the month and dividing that sum by two.

(i) Do not net long and short positions. However, in relation to derivatives, packages such as call-spreads may be treated as a single position (rather than as a long position and a short position).

(ii) The value of any derivative should be its total gross notional value, except that the value of an option should be its delta adjusted notional value

(iii) "Purchases" include any cash paid upon the conversion of one asset into another and the costs of rights or warrants.

(iv) "Sales" include net proceeds of the sale of rights and warrants and net proceeds of assets that have been called or for which payment has been made through redemption or maturity.

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Form CPO-PQR Template - Schedule C

PART 1 - INFORMATION ABOUT THE AGGREGATED POOL ASSETS OF LARGE CPOs (cont'd)

2. TURNOVER RATE OF AGGREGATE PORTFOLIO OF POOLS (cont'd)

(v) Include proceeds from a short sale in the amount of sales of assets in the relevant subcategory during the month. Include the costs of covering a short sale in the amount of purchases in the relevant subcategory during the month.

(vi) Include premiums paid to purchase options and premiums received from the sale of options in the amount of purchases during the month.

	First Month	Second Month	Third Month
Open Positions:			

3. DURATION OF POOLS' FIXED INCOME INVESTMENTS

Listed below are the categories and subcategories in which all of the Pools that are not Private Funds operated by the Large CPO during the most recent Reporting Period had fixed income investments (as reported in question 12 of Schedule A). For each of the subcategories listed, provide the duration for the Pools' aggregated investments. For purposes of this question, "duration" means the weighted average maturity of a portfolio comprised of the specified fixed income assets, where the weights are the relative discounted cash flows in each period.

DURATION OF FIXED INCOME INVESTMENTS	Duration (Long Pos.)	Duration (Short Pos.)
FIXED INCOME		
Total Fixed Income		
Notes, Bonds and Bills		
a. Corporate		
I. Investment grade		
II. Non-investment grade		
b. Municipal		
c. Government		
I. U.S. Treasury securities		
II. Agency securities		
III. Foreign (G10 countries)		
IV. Foreign (all other)		
d. Govn't Sponsored		

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PART 1 · INFORMATION ABOUT THE AGGREGATED POOL ASSETS OF LARGE CPOs (cont'd)

DURATION OF FIXED INCOME INVESTMENTS	Duration (Long Pos.)	Duration (Short Pos.)
Notes, Bonds and Bills		
e. Convertible		
I. Investment grade		
II. Non-investment grade		
Certificates of Deposit		
a. U.S.		
b. Foreign		
Asset Backed Securities		
a. Mortgage Backed Securities		
I. Commercial Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
II. Commercial Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
III. Residential Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
IV. Residential Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		

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PART 1 · INFORMATION ABOUT THE AGGREGATED POOL ASSETS OF LARGE CPOs (cont'd)

DURATION OF FIXED INCOME INVESTMENTS	Duration (Long Pos.)	Duration (Short Pos.)
Asset Backed Securities		
a. Mortgage Backed Securities (cont'd)		
V. Agency Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
VI. Agency Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
b. CDO Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
c. CDO Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
d. CLOs Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
e. CLO Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
f. Credit Card Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		

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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

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PART 1 · INFORMATION ABOUT THE AGGREGATED POOL ASSETS OF LARGE CPOs (cont'd)

DURATION OF FIXED INCOME INVESTMENTS	Duration (Long Pos.)	Duration (Short Pos.)
Asset Backed Securities		
g. Credit Card Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
h. Auto-Loan Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
i. Auto-Loan Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
j. Other		
Senior or higher		
Mezzanine		
Junior/Equity		

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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs

REMINDER: A CPO that qualified as a Large CPO at any point during the most recent Reporting Period must complete and file a separate Part 2 of Schedule C for each Pool that is not a Private Fund that the Large CPO operated during the most recent Reporting Period.

1. LARGE POOL INFORMATION

Provide the following general information concerning the Large Pool:

a. Large Pool's name: _____

b. Large Pool's NFA ID#: _____

c. Total unencumbered cash held by the Large Pool at the close of each month during the Reporting Period:

	First Month	Second Month	Third Month
Unencumbered Cash:			

d. Total number of open positions (approximate) held by the Large Pool at the close of each month during the Reporting Period:

	First Month	Second Month	Third Month
Open Positions:			

2. LIQUIDITY OF LARGE POOL'S PORTFOLIO

Provide the percentage of the Large Pool's portfolio (excluding cash and cash equivalents) that may be liquidated within each of the periods specified below. Each asset should be assigned only to one period and such assignment should be based on the shortest period during which such asset could reasonably be liquidated. Make good faith assumptions for liquidity based on market conditions during the most recent Reporting Period. Assume no "fire-sale" discounting. If certain positions are important contingent parts of the same trade, then all contingent parts of the trade should be listed in the same period as the least liquid part.

	Percentage of Portfolio Capable of Liquidation in:
1 day or less:	
2 days – 7 days:	
8 days – 30 days:	
31 days – 90 days:	
91 days – 180 days:	
181 days – 364 days:	
365 days or longer:	

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Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

3. LARGE POOL COUNTERPARTY CREDIT EXPOSURE

Provide the following information about the Pool's counterparty credit exposure. Do not include CCPs as counterparties and aggregate all Affiliated Entities as a single group for purposes of this question. For purposes of this question, include as collateral any assets purchased in connection with a reverse repo and any collateral that the counterparty has posted to the Large Pool under an arrangement pursuant to which the Large Pool has loaned securities to the counterparty. If you do not separate collateral into initial margin/independent amount and variation margin amounts, or a trade does not require posting of variation margin, then include all of the collateral in initial margin/independent amount.

a. For each of the five counterparties identified in question 3.b. of Schedule B, provide the following information regarding the collateral and other credit support that the counterparty has posted to the Large Pool.

i. Provide the following values of the collateral posted to the Large Pool:

	Initial Margin/ Independent Amounts	Variation Margin
Value of collateral posed in the form of cash and cash equivalents:		
Value of collateral posed in the form of securities (other than cash /cash equivalents):		
Value of all other collateral posted:		

ii. Provide the following percentages of margin amounts that have been rehypothecated or may be rehypothecated by the Large Pool:

	May be Rehypothecated	The Large Pool has Rehypothecated
Percentage of initial margin/independent amounts that:		
Percentage of variation margin that:		

iii. Provide the face amount of letters of credit or other similar third party credit support posted to the Large Pool:

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PART 2 - INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

3. LARGE POOL COUNTERPARTY CREDIT EXPOSURE (cont'd)

b. For each of the five counterparties identified in question 3.c. of Schedule B, provide the following information regarding the collateral and other credit support that the Large Pool has posted to the counterparty.

i. Provide the following values of the collateral posted by the Large Pool to the counterparty:

	Initial Margin/ Independent Amounts	Variation Margin
Value of collateral posed in the form of cash and cash equivalents:		
Value of collateral posed in the form of securities (other than cash /cash equivalents):		
Value of all other collateral posted:		

ii. Provide the following percentages of margin amounts posted by the Large Pool that have been rehypothecated or may be rehypothecated by the counterparty:

	May be Rehypothecated
Percentage of initial margin/independent amounts that:	
Percentage of variation margin that:	

iii. Provide the face amount of letters of credit or other similar third party credit support posted by the Large Pool to the counterparty: [ ]

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PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

3. LARGE POOL COUNTERPARTY CREDIT EXPOSURE (cont'd)

c. Identify the three CCPs to which the Large Pool has the greatest net counterparty credit exposure, measured as a percentage of the Large Pool's Net Asset Value. For this question, margin held at a CCP will typically represent the net counterparty credit exposure to the CCP. Margin is held in a customer omnibus account at a CCP should be considered exposure to the CCP rather than to a trading counterparty. Any margin that a prime broker posts to a CCP on the Large Pool's behalf should be treated as margin posted by the Large Pool to the CCP.

☐CC&G	_____%	☐EMCF	_____%
☐CME Clearing/NYME	_____%	☐Eurex Clearing	_____%
☐DTCC	_____%	☐LCH Clearnet Ltd.:	_____%
☐Fedwire	_____%	☐LCH Clearnet SA:	_____%
☐ICE Clear Europe	_____%	☐Options Clearing Corp.:	_____%
☐ICE Clear U.S.	_____%	☐SIX x-clear:	_____%

4. LARGE POOL RISK METRICS

Provide the following information concerning the Large Pool's risk metrics during the Reporting Period:

a. Did the Large CPO regularly calculate the VaR of the Large Pool during the Reporting Period:

☐ Yes ☐ No

b. If "Yes," provide the following information concerning the VaR calculation(s). If you regularly calculate the VaR of the Large Pool using multiple combinations of confidence interval, horizon and historical observation period, complete a separate question 4.b. of Part 2 of Schedule C for each such combination.

i. What confidence interval was used (e.g. 1 – alpha): ☐

ii. What time horizon was used: ☐

iii. What weighting method was used:

☐ None ☐ Geometric
☐ Equal ☐ Other: ☐

If "geometric," provide the weighting factor used: ☐

iv. What method was used to calculate VaR:

☐ Historical simulation ☐ Monte Carlo simulation
☐ Parametric ☐ Other: ☐

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PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

4. LARGE POOL RISK METRICS (cont'd)

v. Historical look-back period used, if applicable: [ ]

vi. Under the above parameters, what was VaR for the Large Pool for each of the three months of the Reporting Period, stated as a percent of Net Asset Value:

	First Month	Second Month	Third Month
VaR:	[ ]	[ ]	[ ]

c. For each of the market factors specified below, determine the effect that each specified change would have on the Large Pool's portfolio and provide the results, stated as a percent of Net Asset Value.

You may omit a response to any of the specified market factors that the Large CPO does not regularly consider (whether in formal testing or otherwise) in the Large Pool's risk management. If you omit any market factor, check the box in the first column indicating that this market factor is "Not Relevant" to the Large Pool's portfolio.

For each specified change in market factor, separate the effect on the Large Pool's portfolio into long and short components where (i) the long component represents the aggregate result of all positions with a positive change in valuation under a specified change and (ii) the short component represents the aggregate result of all positions with a negative change in valuation under a specified change.

Observe the following regarding the market factors specified below:

(i) A change in "equity prices" means that the prices of all equities move up or down by the specified change, without regard to whether the equities are listed on any exchange or included in any index.

(ii) "Risk free interest rates" means rates of interest accruing on sovereign bonds issued by governments having the highest credit quality, such as U.S. Treasury bonds.

(iii) A change in "credit spreads" means that all credit spreads against risk free interest rates change by the specified amount.

(iv) A change in "currency rates" means that the value of all currencies move up or down by the specified amount.

(v) A change in "commodity prices" means that the prices of all physical commodities move up or down by the specified amount.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

4. LARGE POOL RISK METRICS (cont'd)

(vi) A change in "implied options volatilities" means the implied volatilities of all the options that the Large Pool holds increase or decrease by the specified number of percentage points; and

(vii) A change in "default rates" means that the rate at which debtors on all instruments of the specified type increases or decreases by the specified number of percentage points.

Not Relevant ☐	Market Factor: Equity Prices	Effect on long component of portfolio	Effect on short component of portfolio
	Equity prices increase 5%		
	Equity prices decrease 5%		
	Equity prices increase 25%		
	Equity prices decrease 25%		

Not Relevant ☐	Market Factor: Risk Free Interest Rates	Effect on long component of portfolio	Effect on short component of portfolio
	Risk free interest rates increase 10 bp		
	Risk free interest rates decrease 10 bp		
	Risk free interest rates increase 100 bp		
	Risk free interest rates decrease 100 bp		

Not Relevant ☐	Market Factor: Credit Spreads	Effect on long component of portfolio	Effect on short component of portfolio
	Credit spreads increase 10bp		
	Credit spreads decrease 10 bp		
	Credit spreads increase 300 bp		
	Credit spreads decrease 300 bp		

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

4. LARGE POOL RISK METRICS (cont'd)

Not Relevant ☐	Market Factor: Currency Rates	Effect on long component of portfolio	Effect on short component of portfolio
	Currency rates increase 5%		
	Currency rates decrease 5%		
	Currency rates increase 25%		
	Currency rates decrease 25%		

Not Relevant ☐	Market Factor: Commodity Prices	Effect on long component of portfolio	Effect on short component of portfolio
	Commodity prices increase 10%		
	Commodity prices decrease 10%		
	Commodity prices increase 50%		
	Commodity prices decrease 50%		

Not Relevant ☐	Market Factor: Options Implied Volatility	Effect on long component of portfolio	Effect on short component of portfolio
	Implied volatilities increase 2 percentage points		
	Implied volatilities decrease 2 percentage points		
	Implied volatilities increase 50 percentage points		
	Implied volatilities decrease 50 percentage points		

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

4. LARGE POOL RISK METRICS (cont'd)

Not Relevant	Market Factor: Default Rates for ABS	Effect on long component of portfolio	Effect on short component of portfolio
☐	Default rates increase 1 percentage point		
	Default rates decrease 1 percentage point		
	Default rates increase 5 percentage points		
	Default rates decrease 5 percentage points		

Not Relevant	Market Factor: Default Rates for Corporate Bonds	Effect on long component of portfolio	Effect on short component of portfolio
☐	Default rates increase 1 percentage point		
	Default rates decrease 1 percentage point		
	Default rates increase 5 percentage points		
	Default rates decrease 5 percentage points		

5. LARGE POOL BORROWING INFORMATION

Provide the following information concerning the value of the Large Pool's borrowings for each of the three months of the Reporting Period, types of creditors and the collateral posted to secure borrowings. For the purposes of this question, "borrowings" includes both Secured Borrowings and Unsecured Borrowings.

For each type of borrowing specified below, provide the dollar amount of the Large Pool's borrowings and the percentage borrowed from each of the specified types of creditors. The percentages entered in each month's column should total 100%.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

5. LARGE POOL BORROWING INFORMATION (cont'd)

a. Unsecured Borrowing:

	First Month	Second Month	Third Month
Total Dollar amount:			
Percentage borrowed from U.S. Financial Institutions			
Percentage borrowed from Non-U.S. Financial Institutions			
Percentage borrowed from creditors that are not Financial Institutions			

b. Secured Borrowing:
Classify Secured Borrowings according to the legal agreement governing the borrowing (e.g., Global Master Repurchase Agreement for repos and Prime Brokerage Agreement for prime brokerage). Please note that for repo borrowings, the amount should be the net amount of cash borrowed (after taking into account any initial margin/independent amount, "haircuts" and repayments). Positions under a Global Master Repurchase Agreement should not be netted.

i. Via prime brokerage:

	First Month	Second Month	Third Month
Total Dollar amount:			
Value of collateral posted in the form of cash and cash equivalents			
Value of collateral posted in the form of securities (not cash/cash equivalents)			
Value of other collateral posted			
Face amount of letters of credit (or similar third party credit support) posted			
Percentage of posted collateral that may be rehypothecated			
Percentage borrowed from U.S. Financial Institutions			
Percentage borrowed from Non-U.S. Financial Institutions			
Percentage borrowed from creditors that are not Financial Institutions			

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

5. LARGE POOL BORROWING INFORMATION (cont'd)

ii. Via repo. For the questions concerning collateral via repo, include as collateral any assets sold in connection with the repo as well as any variation margin.

	First Month	Second Month	Third Month
Total Dollar amount:			
Value of collateral posted in the form of cash and cash equivalents			
Value of collateral posted in the form of securities (not cash/cash equivalents)			
Value of other collateral posted			
Face amount of letters of credit (or similar third party credit support) posted			
Percentage of posted collateral that may be rehypothecated			
Percentage borrowed from U.S. Financial Institutions			
Percentage borrowed from Non-U.S. Financial Institutions			
Percentage borrowed from creditors that are not Financial Institutions			

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

5. LARGE POOL BORROWING INFORMATION (cont'd)

iii. Other Secured Borrowings:

Total dollar amount:	First Month	Second Month	Third Month
Value of collateral posted in the form of cash and cash equivalents			
Value of collateral posted in the form of securities (not cash/cash equivalents)			
Value of other collateral posted			
Face amount of letters of credit (or similar third party credit support) posted			
Percentage of posted collateral that may be rehypothecated			
Percentage borrowed from U.S. Financial Institutions			
Percentage borrowed from Non-U.S. Financial Institutions			
Percentage borrowed from creditors that are not Financial Institutions			

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

6. LARGE POOL DERIVATIVE POSITIONS AND POSTED COLLATERAL

Provide the following information concerning the value of the Large Pool's derivative positions and the collateral posted to secure those positions for each of the three months of the Reporting Period. For the value of any derivative, except options, should be its total gross notional value. The value of an option should be its delta adjusted notional value. Do not net long and short positions.

	First Month	Second Month	Third Month
Aggregate value of all derivative positions:			
Value of collateral posted in the form of cash and cash equivalents			
As initial margin/independent amounts:			
As variation margin:			
Value of collateral posted in the form of securities (not cash/cash equivalents)			
As initial margin/independent amounts:			
As variation margin:			
Value of other collateral posted			
As initial margin/independent amounts:			
As variation margin:			
Face amount of letters of credit (or similar third party credit support) posted			
Percentage of initial margin/independent amounts that may be rehypothecated::			
Percentage of variation margin that may be rehypothecated:			

7. LARGE POOL FINANCING LIQUIDITY

Provide the following information concerning the Large Pool's financing liquidity:

a. Provide the aggregate dollar amount of cash financing drawn by or available to the Large Pool, including all drawn and undrawn, committed and uncommitted lines of credit as well as any term financing:

b. Below, enter the percentage of cash financing (as stated in response to question 7.a.) that is contractually committed to the Large Pool by its creditor(s) for the specified periods of time. Amounts of financing should be divided among the specified periods of time in accordance with the longest period for which the creditor is contractually committed to providing such financing. For purposes of this question, if a creditor (or syndicate or administrative/collateral agent) is permitted to vary unilaterally the economic terms of the financing or to revalue

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COMMODITY FUTURES TRADING COMMISSION
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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

7. LARGE POOL FINANCING LIQUIDITY (cont'd)

posted collateral in its own discretion and demand additional collateral, then the line of credit should be deemed uncommitted.

	Percentage of Total Financing:
1 day or less:	
2 days – 7 days:	
8 days – 30 days:	
31 days – 90 days:	
91 days – 180 days:	
181 days – 364 days:	
365 days or longer:	

8. LARGE POOL PARTICIPANT INFORMATION

Provide the following information concerning the Large Pool's participants:

a. As of the Reporting Date, what percentage of the Large Pool's Net Asset Value:

	Percentage of Large Pool's NAV
Is subject to a "side pocket" arrangement:	
May be subject to a suspension of participant withdrawal or redemption by the Large CPO or other governing body:	
May be subject to material restrictions of participant withdrawal or redemption by the Large CPO or other governing body:	
Is subject to a daily margin requirement:	

b. For within the specified periods of time below, enter the percentage of the Large Pool's Net Asset Value that could have been withdrawn or redeemed by the Large Pool's participants as of the Reporting Date. The Large Pool's Net Asset Value should be divided among the specified periods of time in accordance with the shortest period within which participant assets could be withdrawn or redeemed. Assume that you would impose gates where applicable but that you would not completely suspend withdrawals or redemptions and that there are no redemption fees. Base your answers on the valuation date rather than the date on which proceeds are paid to the participant(s). The percentages entered below should total 100%.

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COMMODITY FUTURES TRADING COMMISSION
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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

8. LARGE POOL PARTICIPANT INFORMATION (cont'd)

	Percentage of Total Financing:
1 day or less:	
2 days – 7 days:	
8 days – 30 days:	
31 days – 90 days:	
91 days – 180 days:	
181 days – 364 days:	
365 days or longer:	

9. DURATION OF LARGE POOL'S FIXED INCOME ASSETS

Provide the duration for each fixed income investment reported by the Large Pool in Schedule A. For purposes of this question, "duration" means the weighted average maturity of a portfolio comprised of the specified fixed income assets, where the weights are the relative discounted cash flows in each period.

DURATION OF FIXED INCOME INVESTMENTS	Duration (Long Pos.)	Duration (Short Pos.)
FIXED INCOME		
Total Fixed Income		
Notes, Bonds and Bills		
a. Corporate		
I. Investment grade		
II. Non-investment grade		
b. Municipal		
c. Government		
I. U.S. Treasury securities		
II. Agency securities		
III. Foreign (G10 countries)		
IV. Foreign (all other)		
d. Govn't Sponsored		

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COMMODITY FUTURES TRADING COMMISSION
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POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

DURATION OF FIXED INCOME INVESTMENTS	Duration (Long Pos.)	Duration (Short Pos.)
e. Convertible		
I. Investment grade		
II. Non-investment grade		
Certificates of Deposit		
a. U.S.		
b. Foreign		
Asset Backed Securities		
a. Mortgage Backed Securities		
I. Commercial Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
I. Commercial Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
II. Residential Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
III. Residential Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
IV. Agency Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		

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COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template - Schedule C

PART 2 - INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

DURATION OF FIXED INCOME INVESTMENTS	Duration (Long Pos.)	Duration (Short Pos.)
Asset Backed Securities		
a. Mortgage Backed Securities (cont'd)		
V. Agency Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
b. CDO Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
c. CDO Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
d. CLOs Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
e. CLO Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
f. Credit Card Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
g. Credit Card Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		

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COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs (cont'd)

DURATION OF FIXED INCOME INVESTMENTS Asset Backed Securities	Duration (Long Pos.)	Duration (Short Pos.)
h. Auto-Loan Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
i. Auto-Loan Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
j. Other		
Senior or higher		
Mezzanine		
Junior/Equity		

10. MISCELLANEOUS

In the space below, provide explanations to clarify any assumptions that you made in responding to any question in Schedule C of this Form CPO-PQR. Assumptions must be in addition to, or reasonably follow from, any instructions or other guidance provided in, or in connection with, Schedule C of this Form CPO-PQR. If you are aware of any instructions or other guidance that may require a different assumption, provide a citation and explain why that assumption is not appropriate for this purpose.

Question Number	Explanation

– This Completes Schedule C of Form CPO-PQR –

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COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Oath

OATH

BY FILING THIS REPORT, THE UNDERSIGNED AGREES THAT THE ANSWERS AND INFORMATION PROVIDED HEREIN are complete and accurate, and are not misleading in any material respect to the best of the undersigned's knowledge and belief. Furthermore, by filing this Form CPO-PQR, the undersigned agrees that he or she knows that it is unlawful to sign this Form CPO-PQR if he or she knows or should know that any of the answers and information provided herein is not accurate and complete.

Name of the individual signing this Form CPO-PQR on behalf of the CPO:

Capacity in which the above is signing on behalf of the CPO:

10. Appendix C is added to read as follows:

Appendix C—Form CTA–PR

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

CFTC Form CTA-PR
OMB No.: 3038-XXXX

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Instructions for Using the Form CTA-PR Template

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING OR REVIEWING THE REPORTING FORM. THE FAILURE TO ANSWER ALL QUESTIONS COMPLETELY AND ACCURATELY OR THE OMISSION OF REQUIRED INFORMATION MAY SEVERELY IMPACT YOUR ABILITY TO OPERATE AS A COMMODITY TRADING ADVISOR.

This document is not a reporting form. Do not send this document to NFA. It is a template that you may use to assist in filing the electronic reporting form with the NFA at: http://www.nfa.futures.org.

You may fill out the template online and save and/or print it when you are finished or you can download the template and/or print it and fill it out later.

DEFINED TERMS

Words that are underlined in this form are defined terms and have the meanings contained in the Definitions of Terms section.

GENERAL

Read the Instructions and Questions Carefully

Please read the instructions and the questions in this Form CTA-PR carefully. A question that is answered incorrectly because it was misread or misinterpreted can severely impact your ability to operate as a CTA.

In this Form CTA-PR, "you" means the CTA.

Call CFTC with Questions

If there is any question about whether particular information must be provided or about the manner in which particular information must be provided, contact the CFTC for clarification.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Instructions for Using the Form CTA-PR Template

REPORTING INSTRUCTIONS

1. All CTAs Are Required to Complete and File the Form CTA-PR Quarterly

All CTAs are required to complete and file a Form CTA-PR for each Reporting Period during which they satisfy the definition of CTA and offered at least one Trading Program.

2. Schedule B of this Form CTA-PR Is Only Required of Certain CTAs

Schedule B must be completed and filed by each CTA for every Reporting Period during which they satisfy the definition of CTA and direct in excess of $150 million of Pool assets. Part 1 of Schedule B surveys basic information about the reporting CTA. Part 2 of Schedule B asks for more specific information about Pool assets that were directed by the CTA under the CTA's Trading Program.

Any CTA that (i) is registered with the SEC as an Investment Adviser, and (ii) advised only Pools that satisfy the definition of Private Fund during the Reporting Period will be deemed to have satisfied its Schedule B filing requirements by completing and filing the applicable Sections 1 and 2 of Form PF for the Reporting Period in question.

Limited Schedule B Filing Requirements

However, any CTA that is (i) registered with the SEC as an Investment Adviser, and (ii) advised any Pools that do not satisfy the definition of Private Fund during the Reporting Period will be required to complete Part 2 of Schedule B with respect to the Pool(s) that it advised during the Reporting Period that did not satisfy the definition of Private Fund.

3. The Form CTA-PR Must Be Filed Electronically with NFA

All CTAs must file their Forms CTA-PR electronically using NFA's EasyFile System. NFA's EasyFile System can be accessed through NFA's website at www.nfa.futures.org. You will use the same logon and password for filing your Form CTA-PR as you would for any other EasyFile filings. Questions regarding your NFA ID# or your use of NFA's EasyFile system should be directed to the NFA. The NFA's contact information is available on its website.

4. All Figures Reported in U.S. Dollars

All questions asking for amounts or investments must be reported in U.S. dollars. Any amounts converted to U.S. dollars must use the conversion rate in effect on the Reporting Date.

5. Use of U.S. GAAP

All financial information in this Report must be presented and computed in accordance with Generally Accepted Accounting Principles consistently applied.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Instructions for Using the Form CTA-PR Template

REPORTING INSTRUCTIONS (cont'd)

6. Oath and Affirmation

This Form CTA-PR will not be accepted unless it is complete and contains an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; provided however, that is shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in this Form CTA-PR is not accurate and complete.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Definitions of Terms for the Form CTA-PR Template

DEFINITIONS OF TERMS

Commodity Futures Trading Commission or CFTC: The term "Commodity Futures Trading Commission" or "CFTC" refers to the United States Commodity Futures Trading Commission.

Commodity Pool or Pool: The term "Commodity Pool" or "Pool" has the same meaning as "commodity pool" as defined in section 1a(10) of the Commodity Exchange Act.

Commodity Trading Advisor: The term "commodity trading advisor" or "CTA" has the same meaning as "commodity trading adviser" as defined in section 1a(12) of the Commodity Exchange Act.

Direct: The term "Direct" as used in the context of trading commodity interest accounts, has the same meaning as "direct" as defined in CFTC Rule 4.10(f).

Financial Institutions: The term "financial institution" means any of the following: (i) a bank or savings association, in each case as defined in the Federal Deposit Insurance Act; (ii) a bank holding company or financial holding company, in each case as defined in the Bank Holding Company Act of 1956; (iii) a savings and loan holding company, as defined in the Home Owners' Loan Act; (iv) a Federal credit union, State credit union or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act; or (v) a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971; or (vi) an entity chartered or otherwise organized outside the United States that engages in banking activities.

Form CTA-PR: The term "Form CTA-PR" refers to this Form CTA-PR.

GAAP: The term "Generally Accepted Accounting Principles" refers to U.S. GAAP.

Net Asset Value: The term "net asset value" or "NAV" has the same meaning as "net asset value" as defined in Commission Rule 4.10(b).

National Futures Association or NFA: The term "National Futures Association" or "NFA" refers to the National Futures Association, a registered futures association under Section 17 of the Commodity Exchange Act.

Negative OTE: The term "Negative OTE" means negative open trade equity.

Positive OTE: The term "Positive OTE" means positive open trade equity.

Reporting Date: The term "Reporting Date" means the last calendar day of the Reporting Period for which this Form CTA-PR is required to be completed and filed. For example, the Reporting Date for the first calendar quarter of a year is March 31; the Reporting Date for the second calendar quarter is June 30.

Reporting Period: The term "Reporting Period" means any of the individual calendar quarters (ending March 31, June 30, September 30, and December 31).

Trading Program: The term "Trading Program has the same meaning as "trading program" as defined in CFTC Rule 4.10(g).

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COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule A

INSTRUCTIONS FOR COMPLETING SCHEDULE A

All CTAs are required to complete and file a Form CTA-PR for each Reporting Period during which they satisfy the definition of CTA and offered at least one Trading Program. Schedule A asks only for general survey information about the CTA.

All information provided in this Schedule A should be accurate as of the Reporting Date.

PART 1 · INFORMATION ABOUT THE CTA

1. CTA INFORMATION

Provide the following general information concerning the CTA:

a. CTA's Name: _____

b. CTA's NFA ID#: _____

c. Person to contact concerning this Form CTA-PR: _____

d. Total number of Trading Programs offered by the CTA: _____

e. Total number of Trading Programs offered by the CTA under which the CTA Directs Pool assets: _____

2. POOL ASSETS DIRECTED BY THE CTA

Provide the following information concerning the amount of assets Directed by the CTA:

a. Total assets Directed by CTA: _____

b. Total Pool assets Directed by CTA: _____

– This Completes Schedule A of Form CTA-PR –

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COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INSTRUCTIONS FOR COMPLETING SCHEDULE B

Schedule B must be completed and filed by each CTA for every Reporting Period during which they satisfy the definition of CTA and direct in excess of $150 million of Pool assets. Schedule B surveys basic information about the CTA's Trading Program(s) and asks for more specific position information concerning the Pool assets that were directed by the CTA under its Trading Program(s).

Any CTA that (i) is registered with the SEC as an Investment Adviser, and (ii) advised only Pools that satisfy the definition of Private Fund during the Reporting Period will be deemed to have satisfied its Schedule B filing requirements by completing and filing the applicable Sections 1 and 2 of Form PF for the Reporting Period in question.

Limited Schedule B Filing Requirements
However, any CTA that is (i) registered with the SEC as an Investment Adviser, and (ii) advised any Pools that do not satisfy the definition of Private Fund during the Reporting Period will be required to complete Part 2 of Schedule B with respect to the Pool(s) that it advised during the Reporting Period that did not satisfy the definition of Private Fund.

All information provided in this Schedule B should be accurate as of the Reporting Date.

REMINDER: The CTA must complete and file a separate Schedule B for each Trading Program under which the CTA Directed Pool assets during the most recent Reporting Period.

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COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM

1. TRADING PROGRAM INFORMATION
Provide the following general information concerning the Trading Program:

a. Name of the Trading Program: _____

b. Date of inception of Trading Program: _____

c. Total assets Directed by CTA under the Trading Program: _____

d. Total Pool assets Directed by CTA under the Trading Program: _____

e. Provide the approximate percentage of the total assets Directed by the CTA under the Trading Program that has been allocated to the CTA from other CTAs:

☐ 0%
☐ 1-10%
☐ 10-25%
☐ 26-50%
☐ 51-75%
☐ 76-99%
☐ 100%

f. Provide the approximate percentage of the total assets Directed by the CTA under the Trading Program that the CTA allocates to other CTAs:

☐ 0%
☐ 1-10%
☐ 10-25%
☐ 26-50%
☐ 51-75%
☐ 76-99%
☐ 100%

2. POOL INFORMATION
Provide the following general information for each Pool whose assets are Directed by the CTA under the Trading Program:

a. Name of the Pool: _____

b. NFA ID# of the Pool: _____

c. Address of the Pool: _____

d. Telephone number of the Pool _____

e. Starting date of the relationship with the Pool: _____

f. Do you invest client funds in the Pool: Yes ☐ No ☐

TEMPLATE: DO NOT SEND TO NFA

U.S. COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

2. POOL INFORMATION (cont'd)

g. Approximate percent of the Pool's funds that are Directed by the CTA under the Trading Program:

- ☐ 0%
- ☐ 1-10%
- ☐ 10-25%
- ☐ 26-50%
- ☐ 51-75%
- ☐ 76-99%
- ☐ 100%

3. THIRD PARTY ADMINISTRATORS

Provide the following information concerning any third party administrator(s) used by the CTA for the Trading Program:

a. Does the CTA use third party administrators for the Trading Program? Yes ☐ No ☐

If "Yes," provide the following information for each third party administrator:

i. Name of the administrator: _____

ii. NFA ID# of administrator: _____

iii. Address of the administrator: _____

iv. Telephone number of the administrator: _____

v. Starting date of the relationship with the administrator: _____

vi. Services performed by the administrator:

Calculation of Trading Program performance ☐ Other _____: ☐

Maintenance of the CTA's books and records: ☐

4. STATEMENT OF CHANGES CONCERNING

Provide the following information concerning the Trading Program's activity during the Reporting Period:

a. Assets Directed under Trading Program at the beginning of the Reporting Period: _____

b. Additions to the Trading Program during the Reporting Period: _____

c. Withdrawals from the Trading Program during the Reporting Period: _____

d. Gains (Losses) during the Reporting Period: _____

e. Fees deducted or earned during the Reporting Period: _____

f. Assets Directed under Trading Program at the end of the Reporting Period: _____

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

5. TRADING PROGRAM'S MONTHLY RATES OR RETURN

Provide the Trading Program's monthly rate of return for each month that the Trading Program has operated. Enter "NT" to indicate that the Trading Program did not trade during a particular month. Provide the Trading Program's annual rate of return for the appropriate year in the row marked "Annual."

	2011	2010	2009	2008	2007	2006	2005
Jan.							
Feb.							
March							
June							
July							
August							
Sept.							
Oct.							
Nov.							
Dec.							
ANNUAL							

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

6. TRADING PROGRAM SCHEDULE OF INVESTMENTS

Provide the Trading Program's investments for the total Pool assets Directed by the CTA under the Trading Program in each of the subcategories listed under the following seven headings: (1) Cash; (2) Equities; (3) Alternative Investments; (4) Fixed Income; (5) Derivatives; (6) Options; and (7) Funds. First, determine how the Trading Program's investments should be allocated among each of these seven categories. Once you have determined how the Trading Program's investments should be allocated, enter the dollar value of the Trading Program's total investment in each applicable category on the top, boldfaced line. For example, under the "Cash" heading, the Trading Program's total investment should be listed on the line reading "Total Cash." After the top, boldfaced line is completed, proceed to the subcategories. For each subcategory, determine whether the Trading Program has investments that equal or exceed 5% of the total Pool assets Directed by the CTA under the Trading Program. If so, provide the dollar value of each such investment in the appropriate subcategory. . If the dollar value of any investment in a subcategory equals or exceeds 5% of the total Pool assets Directed by the CTA under the Trading Program, you must itemize the investments in that subcategory.

	Long	Short
CASH		
Total Cash		
At Carrying Broker		
EQUITIES		
Total Listed Equities		
Stocks		
a. Energy and Utilities		
b. Technology		
c. Media		
d. Telecommunication		
e. Healthcare		
f. Consumer Services		
g. Business Services		
h. Issued by Financial Institutions		
i. Consumer Goods		
j. Industrial Materials		
Exchange Traded Funds		
American Deposit Receipts		

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

EQUITIES	Long	Short
Other		
Total Unlisted Equities		
Unlisted Equities Issued by Financial Institutions		

ALTERNATIVE INVESTMENTS	Long	Short
Total Alternative Investments		
Real Estate		
a. Commercial		
b. Residential		
Private Equity		
Venture Capital		
Forex		
Spot		
a. Total Metals		
a. Gold		
b. Total Energy		
a. Crude oil		
b. Natural gas		
c. Power		
c. Other		
Loans to Affiliates		
Promissory Notes		
Physicals		
a. Total Metals		
a. Gold		
b. Agriculture		

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

ALTERNATIVE INVESTMENTS	Long	Short
c. Total Energy		
a. Crude oil		
b. Natural gas		
c. Power		
Other		

FIXED INCOME	Long	Short
Total Fixed Income		
Notes, Bonds and Bills		
a. Corporate		
I. Investment grade		
II. Non-investment grade		
b. Municipal		
c. Government		
I. U.S. Treasury securities		
II. Agency securities		
III. Foreign (G10 countries)		
IV. Foreign (all other)		
d. Govn't Sponsored		
e. Convertible		
I. Investment grade		
II. Non-investment grade		
Certificates of Deposit		
a. U.S.		
b. Foreign		

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
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Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

FIXED INCOME	Long	Short
Asset Backed Securities		
a. Mortgage Backed Securities		
I. Commercial Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
II. Commercial Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
III. Residential Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
IV. Residential Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
V. Agency Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
VI. Agency Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
b. CDO Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		

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COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

FIXED INCOME	Long	Short
Asset Backed Securities (cont'd)		
c. CDO Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
d. CDO Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
e. CLOs Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
f. CLO Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
g. Credit Card Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		
h. Credit Card Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
i. Auto-Loan Securitizations		
Senior or higher		
Mezzanine		
Junior/Equity		

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

FIXED INCOME	Long	Short
Asset Backed Securities (cont'd)		
j. Auto-Loan Resecuritizations		
Senior or higher		
Mezzanine		
Junior/Equity		
k. Other		
Senior or higher		
Mezzanine		
Junior/Equity		
Repos		
Reverse Repos		

DERIVATIVES	Positive OTE	Negative OTE
Total Derivatives		
Futures		
a. Indices		
I. Equity		
II. Commodity		
b. Metals		
I. Gold		
c. Agriculture		
d. Energy		
I. Crude oil		
II. Natural gas		
III. Power		
e. Interest Rate		
f. Currency		

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

DERIVATIVES	Positive OTE	Negative OTE
Futures		
g. Related to Financial Institutions		
h. Other		
Forwards		
Swaps		
a. Interest Rate Swap		
b. Equity/Index Swap		
c. Dividend Swap		
d. Currency Swap		
e. Variance Swap		
f. Credit Default Swap		
a. Single name CDS		
i. Related to Financial Institutions		
b. Index CDS		
c. Exotic CDS		
g. OTC Swap		
a. Related to Financial Institutions		
h. Total Return Swap		
i. Other		

OPTIONS	Long Option Value	Short Option Value
Total Options		
Futures		
a. Indices		
I. Equity		
II. Commodity		

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

OPTIONS	Long Option Value	Short Option Value
Futures		
b. Metals		
c. Agriculture		
d. Energy		
e. Interest Rate		
f. Currency		
g. Related to Financial Institutions		
h. Other		
Stocks		
a. Related to Financial Institutions		
Customized/OTC		
Physicals		
a. Metals		
a. Gold		
b. Agriculture		
c. Currency		
d. Energy		
a. Crude oil		
b. Natural gas		
c. Power		
e. Other		

FUNDS	Long
Total Funds	
Mutual Fund	

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Schedule B

INFORMATION ABOUT THE CTA'S TRADING PROGRAM (cont'd)

FUNDS

	Long
a. U.S.	
b. Foreign	
Hedge Fund	
Equity Fund	
Money Market Fund	
Private Equity Fund	
REIT	
Other	

ITEMIZATION

a. If the dollar value of any investment in any subcategory under the heading "Equities," "Alternative Investments" or "Fixed Income" equals or exceeds 5% of the total Pool assets Directed by the CTA under the Trading Program, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/ Short	Cost	Fair Value	Year-to-Date Gain (Loss)

b. If the dollar value of any investment in any subcategory under the heading "Derivatives" or "Options" equals or exceeds 5% of the total Pool assets Directed by the CTA under the Trading Program, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/ Short	OTE	Counterparty	Year-to-Date Gain (Loss)

c. If the dollar value of any investment in any subcategory under the heading "Funds" equals or exceeds 5% of the total Pool assets Directed by the CTA under the Trading Program, itemize the investment(s) in the table below.

Subheading	Fund Name	Fund Type	Fair Value	Year-to-Date Gain (Loss)

– This Completes Schedule B of Form CTA-PR –

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

QUARTERLY PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Oath

OATH

BY FILING THIS Form CTA-PR, THE UNDERSIGNED AGREES THAT THE ANSWERS AND INFORMATION PROVIDED HEREIN are complete and accurate, and are not misleading in any material respect to the best of the undersigned's knowledge and belief. Furthermore, by filing this Form CTA-PR, the undersigned agrees that he or she knows that it is unlawful to sign this Form CTA-PR if he or she knows or should know that any of the answers and information provided herein is not accurate and complete.

Name of the individual signing this Form CTA-PR on behalf of the CTA:

Capacity in which the above is signing on behalf of the CTA:

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BILLING CODE C

PART 145—COMMISSION RECORDS AND INFORMATION

11. The authority citation for part 145 continues to read as follows:

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)).

12. In § 145.5, revise paragraphs (d)(1)(viii) and (h) to read as follows:

§ 145.5 Disclosure of nonpublic records.

* * * * *

(d) * * *

(1) * * *

(viii) The following reports and statements that are also set forth in paragraph (h) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

(A) The following portions of Form CPO–PQR required to be filed pursuant to 17 CFR 4.27: Schedule A: Question 2, subparts (b) and D; Question 3, subparts (g) and (h); Question 10, subparts (b), (c), (d), (e), and (g); Question 11; Question 12; and Question 13; and Schedules B and C;

(B) The following portions of Form CTA–PR required to be filed pursuant to 17 CFR 4.27: Schedule B: Question 4,

subparts (b), (c), (d), and (e); Question 5; and Question 6;

* * * * *

(h) Contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (d)(1)(viii) of this section, except as specified in 17 CFR 1.10(g)(2) and 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

(1) The following portions of Form CPO–PQR required to be filed pursuant to 17 CFR 4.27: Schedule A: Question 2, subparts (b) and D; Question 3, subparts (g) and (h); Question 10, subparts (b), (c), (d), (e), and (g); Question 11; Question 12; and Question 13; and Schedules B and C;

(2) The following portions of Form CTA–PR required to be filed pursuant to 17 CFR 4.27: Schedule B: Question 4, subparts (b), (c), (d), and (e); Question 5; and Question 6; and

* * * * *

PART 147—OPEN COMMISSION MEETINGS

13. The authority citation for part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b); sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975)).

14. In § 147.3, revise (b)(4)(i)(H) and (b)(8) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *

(4)(i) * * *

(H) The following reports and statements that are also set forth in paragraph (b)(8) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c0(5); all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); the following portions of Form CPO–PQR required to be filed pursuant to 17 CFR 4.27: Schedule A: Question 2, subparts (b) and D; Question 3, subparts (g) and (h); Question 10, subparts (b), (c), (d), (e), and (g); Question 11; Question 12; and Question 13; and Schedules B and C; and the following portions of Form CTA–PR required to be filed pursuant to 17 CFR 4.27: Schedule B: Question 4, subparts (b), (c), (d), and (e); Question 5; and Question 6;

* * * * *

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (b)(4)(i)(H) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

(i) The following portions of Form CPO–PQR required to be filed pursuant to 17 CFR 4.27: Schedule A: Question 2, subparts (b) and D; Question 3, subparts (g) and (h); Question 10, subparts (b), (c), (d), (e), and (g); Question 11; Question 12; and Question 13; and Schedules B and C; and

(ii) The following portions of Form CTA–PR required to be filed pursuant to 17 CFR 4.27: Schedule B: Question 4, subparts (b), (c), (d), and (e); Question 5; and Question 6;

* * * * *

Issued in Washington, DC on January 26, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers (by proxy), Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed joint rulemaking with the Securities and Exchange Commission (SEC) that requires reporting by investment advisers to private funds that are also registered as commodity pool operators (CPOs) or commodity trading advisors (CTAs) with the CFTC. I also support the CFTC's proposed amendment to compliance obligations of CPOs and CTAs. The joint rule requires private fund investment advisers with assets under management totaling more than $150 million to provide the SEC with financial and other trading information. Private fund investment advisers with assets under management totaling more than $1 billion would be subject to heightened reporting requirements. I support the CFTC rule that would bring similar reporting to CPOs and CTAs with assets under management greater than $150 million that are not otherwise jointly regulated. This is to ensure that similar entities in the asset management arena are regulated consistently. Lastly, the proposal repeals certain exemptions issued under Part 4 of the Commission's regulations so the Commission will have a more complete picture of the activity of operators of and advisors to pooled investment vehicles in the commodities marketplace.

[FR Doc. 2011–2437 Filed 2–10–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Friday,
No. 29 February 11, 2011

Part V

Commodity Futures Trading Commission

17 CFR Part 4

Securities and Exchange Commission

17 CFR Parts 275 and 279
Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AD03

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–3145; File No. S7–05–11]

RIN 3235–AK92

Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") (collectively, "we" or the "Commissions") are proposing new rules under the Commodity Exchange Act and the Investment Advisers Act of 1940 to implement provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed SEC rule would require investment advisers registered with the SEC that advise one or more private funds to file Form PF with the SEC. The proposed CFTC rule would require commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") registered with the CFTC to satisfy certain proposed CFTC filing requirements by filing Form PF with the SEC, but only if those CPOs and CTAs are also registered with the SEC as investment advisers and advise one or more private funds. The information contained in Form PF is designed, among other things, to assist the Financial Stability Oversight Council in its assessment of systemic risk in the U.S. financial system. These advisers would file these reports electronically, on a confidential basis.

DATES: Comments should be received on or before April 12, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

CFTC

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

"Form PF" must be in the subject field of comments submitted via e-mail, and clearly indicated on written submissions. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in 17 CFR 145.9.

The CFTC reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, including, but not limited to, obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act, 5 U.S.C. 552, *et seq.* ("FOIA").

SEC

Electronic Comments

- Use the SEC's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–05–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–05–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the SEC'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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: *CFTC:* Daniel S. Konar II, Attorney-Advisor, Telephone: (202) 418–5405, E-mail: *dkonar@cftc.gov,* Amanda L. Olear, Special Counsel, Telephone: (202) 418–5283, E-mail: *aolear@cftc.gov,* or Kevin P. Walek, Assistant Director, Telephone: (202) 418–5405, E-mail: *kwalek@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; *SEC:* David P. Bartels, Attorney-Adviser, Sarah G. ten Siethoff, Senior Special Counsel, or David A. Vaughan, Attorney Fellow, at (202) 551–6787 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The CFTC is requesting public comment on proposed rule 4.27(d) [17 CFR 4.27(d)] under the Commodity Exchange Act ("CEA") [1] and proposed Form PF. The SEC is requesting public comment on proposed rule 204(b)–1 [17 CFR 275.204(b)–1] and proposed Form PF [17 CFR 279.9] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] ("Advisers Act").[2]

I. Background

A. The Dodd-Frank Act

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[3] While the Dodd-Frank Act provides for wide-ranging reform of financial regulation, one stated focus of this legislation is to

[1] 7 U.S.C. 1a.

[2] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified, and when we refer to Advisers Act rule 204(b)–1, or any paragraph of this rule, we are referring to 17 CFR 275.204(b)–1 of the Code of Federal Regulations in which this rule would be published. In addition, in this Release, when we refer to the "Advisers Act," we refer to the Advisers Act as in effect on July 21, 2011.

[3] Public Law 111–203, 124 Stat. 1376 (2010).

"promote the financial stability of the United States" by, among other measures, establishing better monitoring of emerging risks using a system-wide perspective.[4] To further this goal, Title I of the Dodd-Frank Act establishes the Financial Stability Oversight Council ("FSOC"), which is comprised of the leaders of various financial regulators (including the Commissions' Chairmen) and other participants.[5] The Dodd-Frank Act directs FSOC to monitor emerging risks to U.S. financial stability and to require that the Board of Governors of the Federal Reserve System ("FRB") supervise designated nonbank financial companies that may pose risks to U.S. financial stability in the event of their material financial distress or failure or because of their activities.[6] In addition, the Dodd-Frank Act directs FSOC to recommend to the FRB heightened prudential standards for designated nonbank financial companies.[7]

The Dodd-Frank Act anticipates that FSOC will be supported in these responsibilities by various regulatory agencies, including the Commissions. To that end, the Dodd-Frank Act amends certain statutes, including the Advisers Act, to authorize or direct certain Federal agencies to support FSOC. Title IV of the Dodd-Frank Act amends the Advisers Act to generally require that advisers to hedge funds and other private funds[8] register with the SEC.[9] Congress required this registration in part because it believed that "information regarding [the] size, strategies and positions [of large private funds] could be crucial to regulatory attempts to deal with a future crisis."[10] To that end, Section 404 of the Dodd-Frank Act, which amends section 204(b) of the Advisers Act, directs the SEC to require private fund advisers[11] to maintain records and file reports containing such information as the SEC deems necessary and appropriate in the public interest and for investor protection or for the assessment of systemic risk by FSOC.[12] The records and reports must include a description of certain information about private funds, such as the amount of assets under management, use of leverage, counterparty credit risk exposure, and trading and investment positions for each private fund advised by the adviser.[13] The SEC must issue jointly with the CFTC, after consultation with FSOC, rules establishing the form and content of any such reports required to be filed with respect to private fund advisers also registered with the CFTC.[14]

This joint proposal is designed to fulfill this statutory mandate. Under proposed Advisers Act rule 204(b)–1, private fund advisers would be required to file Form PF with the SEC. Private fund advisers that also are registered as CPOs or CTAs with the CFTC would file Form PF to satisfy certain CFTC systemic risk reporting requirements.[15] Information collected about private funds on Form PF, together with information the SEC collects on Form ADV and the information the CFTC separately has proposed CPOs file on Form CPO–PQR and CTAs file on Form CTA–PR, will provide FSOC and the Commissions with important information about the basic operations and strategies of private funds and will be important in FSOC obtaining a baseline picture of potential systemic risk across both the entire private fund industry and in particular kinds of private funds, such as hedge funds.[16]

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[4] *See* S. Conf. Rep. No. 111–176, at 2–3 (2010) ("Senate Committee Report").

[5] Section 111 of the Dodd-Frank Act provides that the voting members of FSOC will be the Secretary of the Treasury, the Chairman of the FRB, the Comptroller of the Currency, the Director of the Bureau of Consumer Financial Protection, the Chairman of the SEC, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the CFTC, the Director of the Federal Housing Finance Agency, the Chairman of the National Credit Union Administration Board and an independent member appointed by the President having insurance expertise. FSOC will also have five nonvoting members, which are the Director of the Office of Financial Research, the Director of the Federal Insurance Office, a state insurance commissioner, a state banking supervisor and a state securities commissioner.

[6] Section 112 of the Dodd-Frank Act.

[7] *Id.*

[8] Section 202(a)(29) of the Advisers Act defines the term "private fund" as "an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) ("Investment Company Act"), but for section 3(c)(1) or 3(c)(7) of that Act." Section 3(c)(1) of the Investment Company Act provides an exclusion from the definition of "investment company" for any "issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities." Section 3(c)(7) of the Investment Company Act provides an exclusion from the definition of "investment company" for any "issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities." The term "qualified purchaser" is defined in section 2(a)(51) of the Investment Company Act.

[9] The Dodd-Frank Act requires such private fund adviser registration by amending section 203(b)(3) of the Advisers Act to repeal the exemption from registration for any adviser that during the course of the preceding 12 months had fewer than 15 clients and neither held itself out to the public as an investment adviser nor advised any registered investment company or business development company. *See* section 403 of the Dodd-Frank Act. *See also infra* note 11 for the definition of "private fund adviser." There are exemptions from the registration requirement, including exemptions for advisers to venture capital funds and advisers to private funds with less than $150 million in assets under management in the United States. There also is an exemption for "foreign private advisers," which are investment advisers with no place of business in the United States, fewer than 15 clients in the United States and investors in the United States in private funds advised by the adviser, and less than $25 million in assets under management from such clients and investors. *See* sections 402, 407 and 408 of the Dodd-Frank Act. *See also Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers,* Investment Advisers Act Release No. IA–3111 (Nov. 19, 2010), 75 FR 77,190 (Dec. 10, 2010) ("Private Fund Exemption Release"); *Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. IA–3110 (Nov. 19, 2010), 75 FR 77,052 (Dec. 10, 2010) ("Implementing Release"). References in this Release to Form ADV or terms defined in Form ADV or its glossary are to the form and glossary as they are proposed to be amended in the Implementing Release.

[10] *See* Senate Committee Report, *supra* note 4, at 38.

[11] Throughout this Release, we use the term "private fund adviser" to mean any investment adviser that (i) is registered or required to register with the SEC (including any investment adviser that is also registered or required to register with the CFTC as a CPO or CTA) and (ii) advises one or more private funds. We are not proposing that advisers solely to venture capital funds or advisers to private funds that in the aggregate have less than $150 million in assets under management in the United States ("exempt reporting advisers") be required to file Form PF.

[12] While Advisers Act section 204(b)(1) could be read in isolation to imply that the SEC requiring private fund systemic risk reporting is discretionary, other amendments to the Advisers Act made by the Dodd-Frank Act (such as Advisers Act section 204(b)(5) and 211(e) suggest that Congress intended such rulemaking to be mandatory. *See also* Senate Committee Report, *supra* note 4, at 39 ("this title requires private fund advisers * * * to disclose information regarding their investment positions and strategies.").

[13] *See* section 404 of the Dodd-Frank Act.

[14] *See* section 406 of the Dodd-Frank Act.

[15] For these private fund advisers, filing Form PF through the Form PF filing system would be a filing with both the SEC and CFTC. Irrespective of their filing a Form PF with the SEC, all private fund advisers that are also registered as CPOs and CTAs with the CFTC would be required to file Schedule A of proposed Form CPO–PQR (for CPOs) or Schedule A of proposed Form CTA–PR (for CTAs). Additionally, to the extent that they operate or advise commodity pools that do not satisfy the definition of "private fund" under the Dodd-Frank Act, private fund advisers that are also registered as CPOs or CTAs would still be required to file proposed Form CPO–PQR (for CPOs) and proposed Form CTA–PR (for CTAs), as applicable.

[16] The information reported through the various reporting forms is designed to be complementary, and not duplicative. Information reported on Form ADV would be publicly available, while information reported on Form PF and proposed Forms CPO–PQR and CTA–PR would be confidential to the extent permitted under applicable law. Form ADV and Form PF also have different principal purposes. Form ADV primarily aims at providing the SEC and investors with basic information about advisers (including private fund advisers) and the funds they manage for investor protection purposes, although Form ADV information also will be available to FSOC.

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Information the SEC obtains through reporting under section 404 of the Dodd-Frank Act is to be shared with FSOC as FSOC considers necessary for purposes of assessing the systemic risk posed by private funds and generally is to remain confidential.[17] Our staffs have consulted with staff representing FSOC's members in developing this proposal. We note that simultaneous with our staffs' FSOC consultations relating to this rulemaking, FSOC has been building out its standards for assessing systemic risk across different kinds of financial firms and has recently proposed standards for determining which nonbank financial companies should be designated as subject to FRB supervision.[18]

B. International Coordination

In assessing systemic risk, the Dodd-Frank Act requires that FSOC coordinate with foreign financial regulators.[19] This coordination may be particularly important in assessing systemic risk associated with hedge funds and other private funds because they often operate globally and make significant investments in firms and markets around the world.[20] As others have recognized, "[g]iven the global nature of the markets in which [private fund] managers and funds operate, it is imperative that a regulatory framework be applied on an internationally consistent basis."[21] International regulatory coordination also has been cited as a critical element in facilitating financial regulators' formulation of a comprehensive and effective response to future financial crises.[22] Collecting consistent and comparable information is of added value in private fund systemic risk reporting because it would aid in the assessment of systemic risk on a global basis and thus enhance the utility of information sharing among U.S. and foreign financial regulators.[23]

Recognizing this benefit, our staffs participated in the International Organization of Securities Commissions' ("IOSCO") preparation of a report regarding hedge fund oversight.[24] Among other matters, this report recommended that hedge fund advisers provide to their national regulators information for the identification, analysis, and mitigation of systemic risk. It also recommended that regulators cooperate and share information where appropriate in order to facilitate efficient and effective oversight of globally active hedge funds and to help identify systemic risks, risks to market integrity, and other risks arising from the activities or exposures of hedge funds.[25] The types of information that IOSCO recommended regulators gather from hedge fund advisers is consistent with and comparable to the types of information we propose to collect from hedge funds through Form PF, as described in further detail below.[26]

In addition, our staffs have consulted with the United Kingdom's Financial Services Authority (the "FSA"), which has conducted a voluntary semi-annual survey since October 2009 by sampling the largest hedge fund groups based in the United Kingdom.[27] Because many hedge fund advisers are located in the United Kingdom and subject to the jurisdiction of the FSA, this coordination has been particularly important.[28] UK hedge fund advisers complete this survey on a voluntary basis, and the survey collects information regarding all funds managed by the particular hedge fund adviser as well as for individual funds with at least $500 million in assets. The information the survey collects is designed to help the FSA better understand hedge funds' use of leverage, "footprints" in various asset classes (including concentration and liquidity issues), the scale of asset/liability mismatches, and counterparty credit risks.[29] In addition, for more than five years the FSA has been conducting a semi-annual survey of hedge fund counterparties to assist it in assessing trends in counterparty credit risk, margin requirements, and other matters.[30] Our staffs' consultation with the FSA as they designed and conducted their hedge fund surveys has been very informative, and we have incorporated into proposed Form PF many of the types of information collected through the FSA surveys.

SEC staff also has consulted with Hong Kong's Securities and Futures Commission regarding hedge fund oversight and data collection because Hong Kong is an important jurisdiction for hedge funds in Asia.[31] This consultation also has proven helpful in designing proposed Form PF.

Information on Form ADV is designed to provide the SEC with information necessary to its administration of the Advisers Act and to efficiently allocate its examination resources based on the risks the SEC discerns or the identification of common business activities from information provided by advisers. *See* Implementing Release, *supra* note 9. In contrast, the Commissions intend to use Form PF primarily as a confidential systemic risk disclosure tool to assist FSOC in monitoring and assessing systemic risk, although it also would be available to assist the Commissions in their regulatory programs, including examinations and investigations and investor protection efforts relating to private fund advisers.

[17] *See* section 404 of the Dodd-Frank Act; *infra* note 39 and accompanying text.

[18] *See, e.g., Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies,* Financial Stability Oversight Council Release (Jan. 18, 2011); *Advance Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies,* Financial Stability Oversight Council Release (Oct. 1, 2010), 75 FR 61653 (Oct. 6, 2010) ("FSOC Designation ANPR").

[19] *See* section 175 of the Dodd-Frank Act.

[20] *See* Damian Alexander, *Global Hedge Fund Assets Rebound to Just Over $1.8 Trillion,* Hedge Fund Intelligence (Apr. 7, 2010) ("HFI").

[21] Group of Thirty, Financial Reform: A Framework for Financial Stability (Jan. 15, 2009).

[22] *See* U.S. Department of the Treasury, *Financial Regulatory Reform: A New Foundation* (2009), at 8; and *Equipping Financial Regulators with the Tools Necessary to Monitor Systemic Risk,* Senate Banking Subcommittee on Security and International Trade and Finance, Feb. 12, 2010 (testimony of Daniel K. Tarullo, member of the FRB). *See also* Group of 20 and the International Monetary Fund, The Global P Crisis for Fure Regulation of Financial Institutions and M arkets and for Liquidity Management (Feb. 4, 2009).

[23] The Commissions expect that they may share information reported on Form PF with various foreign financial regulators under information sharing agreements in which the foreign regulator agrees to keep the information confidential.

[24] Technical Committee of the International Organization of Securities Commissions, Hedge Funds O (June 2009), *available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD293.pdf* ("IOSCO Report").

[25] *Id.* at 3.

[26] *See* IOSCO Report, *supra* note 24, at 14; Press Release, International Regulators Publish Systemic Risk Data Requirements for Hedge Funds (Feb. 25, 2010), *available at https://www.iosco.org/news/pdf/IOSCONEWS179.pdf.* The IOSCO Report states that systemic risk information that hedge fund advisers should provide to regulators should include, for example: (1) Information on their prime brokers, custodian, and background information on the persons managing the assets; (2) information on the manager's larger funds including the net asset value, predominant strategy/regional focus and performance; (3) leverage and risk information, including concentration risk of the hedge fund adviser's larger funds; (4) asset and liability information for the manager's larger funds; (5) counterparty risk, including the biggest sources of credit; (6) product exposure for all of the manager's assets; and (7) investment activity known to represent a significant proportion of such activity in important markets or products. Some of this information would be collected through the revised Form ADV, as proposed by the SEC in the Implementing Release, rather than Form PF.

[27] The survey canvasses approximately 50 FSA-authorized investment managers. *See, e.g.,* Financial Services Authority, *Assessing Possible Sources of Systemic Risk from Hedge Funds: A Report on the Findings of the Hedge Fund as Counterparty Survey and the Hedge Fund Survey* (Jul. 2010), *available at http://www.fsa.gov.uk/pubs/other/hf_report.pdf* ("FSA Survey").

[28] According to Hedge Fund Intelligence, U.K.-based advisers manage approximately 16% of global hedge fund assets. This concentration of hedge fund advisers is second only to the United States (managing approximately 76% of global hedge fund assets). *See* HFI, *supra* note 20.

[29] FSA Survey, *supra* note 27.

[30] *Id.*

[31] According to Hedge Fund Intelligence, Hong Kong-based advisers manage approximately 0.54% of global hedge fund assets, which is the largest concentration of hedge fund advisers in Asia. *See* HFI, *supra* note 20.

Collectively, hedge fund advisers based in the United States, the United Kingdom, and Hong Kong represent over 92 percent of global hedge fund assets, and thus a broad consistency among these jurisdictions' hedge fund information collections, including our own, will facilitate the sharing of consistent and comparable information for systemic risk assessment purposes for most global hedge fund assets under management.[32] Finally, in connection with the IOSCO report, IOSCO members (including the SEC and CFTC) agreed, on a "best efforts" basis, to conduct a survey of hedge fund reporting data as of the end of September 2010 based on the guidelines established in the IOSCO report and the FSA survey. This internationally coordinated survey effort has also informed our proposed reporting.

International efforts also have focused on potential systemic considerations arising out of other types of private funds, such as private equity funds. For example, an International Monetary Fund ("IMF") staff paper has focused on "extending the perimeter" of effective regulatory oversight to capture all financial activities that may pose systemic risks, regardless of the type of institution in which they occur.[33] The IMF paper proposed that these financial activities be subject to reporting obligations so that regulators may assess potential systemic risk and emphasized the need to capture all financial activities conducted on a leveraged basis, including activities of leveraged private equity vehicles.[34] Others also have recognized a need for monitoring the private equity sector because having information on its potentially systemically important interactions with the financial system are an important part of regulators' obtaining the complete picture of the broader financial system that is so vital to effective systemic risk monitoring.[35] We have taken these international efforts relating to systemic risk monitoring in private equity funds into account in the proposed reporting discussed below.

II. Discussion

The SEC is proposing a new rule 204(b)–1 under the Advisers Act to require that SEC-registered investment advisers report systemic risk information to the SEC on Form PF if they advise one or more private funds.[36] For registered CPOs and CTAs that are also registered as investment advisers with the SEC and advise a private fund, this report also would serve as substitute compliance for a portion of the CFTC's proposed systemic risk reporting requirements under proposed Commodity Exchange Act rule 4.27(d).[37] Because commodity pools that meet the definition of a private fund are categorized as hedge funds for purposes of Form PF as discussed below, CPOs and CTAs filing Form PF would need to complete only the sections applicable to hedge fund advisers, and the form would be a joint form only with respect to those sections.[38]

Form PF would elicit non-public information about private funds and their trading strategies the public disclosure of which, in many cases, could adversely affect the funds and their investors. The SEC does not intend to make public Form PF information identifiable to any particular adviser or private fund, although the SEC may use Form PF information in an enforcement action. Amendments to the Advisers Act added by the Dodd-Frank Act preclude the SEC from being compelled to reveal the information except in very limited circumstances.[39] Similarly, the Dodd-Frank Act exempts the CFTC from being compelled under FOIA to disclose to the public any information collected through Form PF and requires that the CFTC maintain the confidentiality of that information consistent with the level of confidentiality established for the SEC in section 404 of the Dodd-Frank Act. The Commissions would make information collected through Form PF available to FSOC, as is required by the Dodd-Frank Act, subject to the confidentiality provisions of the Dodd-Frank Act.[40]

We propose that each private fund adviser report basic information about the operations of its private funds on Form PF once each year. We propose that a relatively small number of Large Private Fund Advisers (described in section II.B below) instead be required to submit this basic information each quarter along with additional systemic risk related information required by Form PF concerning certain of their

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[32] *See* HFI, *supra* note 20.

[33] *See* Ana Carvajal *et al., The Perimeter of Financial Regulation,* IMF Staff Position Note SPN/09/07 (Mar. 26, 2009), *available at http://www.imf.org/external/pubs/ft/spn/2009/spn0907.pdf.*

[34] *Id.,* at 8.

[35] *See, e.g.,* Lorenzo Bini Smaghi, Member of the Executive Board of the European Central Bank, Going Forward—Regulation and Supervision after the Financial Turmoil, Speech by at the 4th International Conference of Financial Regulation and Supervision (Jun. 19, 2009), *available at http://www.bis.org/review/r090623e.pdf* (stating "macro-prudential analysis needs to capture all components of financial systems and how they interact. This includes all intermediaries, markets and infrastructures underpinning them. In this respect, it is important to consider that at present some of these components, such as hedge funds, private equity firms or over-the-counter (OTC) financial markets, are not subject to micro-prudential supervision. But they need to be part of macro-prudential analysis and risk assessments, as they influence the overall behaviour of the financial system. To gain a truly "systemic" perspective on the financial system, no material element should be left out."); *Private Equity and Leveraged Finance Markets,* Bank for International Settlements Committee on the Global Financial System Working Paper No. 30 (Jul. 2008), *available at http://www.bis.org/publ/cgfs30.pdf* ("BIS Private Equity Paper") ("Going forward, the Working Group believes that enhancing transparency and strengthening risk management practices [relating to private equity and leveraged finance markets] require special attention. * * * The recent market turmoil has demonstrated that a number of the risks in the leveraged finance market are likely to materialise in combination with other financial market risks in stressed market conditions. * * * In the public sector, there is a stronger case for developing early warning indicators and devoting more research efforts to modelling the dynamic relationships between risk factors with a view to understanding the interrelationships across markets and their impact on the financial sector."). *See also* Macroeconomic Assessment Group established by the Financial Stability Board and the Basel Committee on Banking Supervision, Interim Report: Assessing the Macroeconomic Impact of the Transition to Stronger Capital and Liquidity Requirements (Aug. 2010), at section 5.2, *available at http://www.financialstabilityboard.org/publications/r_100818b.pdf.*

[36] *See* proposed Advisers Act rule 204(b)–1.

[37] *See* proposed Commodity Exchange Act rule 4.27(d), which provides that these CPOs and CTAs would need to file other reports as required under rule 4.27 with respect to pools that are not private funds. For purposes of this proposed rule, it is the CFTC's position that any false or misleading statement of a material fact or material omission in the jointly proposed sections (sections 1 and 2) of proposed Form PF that is filed by these CPOs and CTAs shall constitute a violation of section 6(c)(2) of the Commodity Exchange Act. Proposed Form PF contains an oath consistent with this position.

[38] Thus, private fund advisers that also are CPOs or CTAs would be obligated to complete only section 1 and, if they met the applicable threshold, section 2 of Form PF. Accordingly, Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the form.

[39] *See* section 404 of the Dodd-Frank Act stating that "[n]otwithstanding any other provision of law, the Commission [SEC] may not be compelled to disclose any report or information contained therein required to be filed with the Commission [SEC] under this subsection" except to Congress upon agreement of confidentiality. Section 404 also provides that nothing prevents the SEC from complying with a request for information from any other federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction or an order of a court of the U.S. in an action brought by the U.S. or the SEC. Section 404 of the Dodd-Frank Act also states that the SEC shall make available to FSOC copies of all reports, documents, records, and information filed with or provided to the SEC by an investment adviser under section 404 of the Dodd-Frank Act as FSOC may consider necessary for the purpose of assessing the systemic risk posed by a private fund and that FSOC shall maintain the confidentiality of that information consistent with the level of confidentiality established for the SEC in section 404 of the Dodd-Frank Act.

[40] *See* section 404 of the Dodd-Frank Act.

private funds.[41] In the sections below, we describe the principal reasons we believe that FSOC needs this information in order to monitor the systemic risk that may be associated with the operation of private funds.

A. Purposes of Form PF

The Dodd-Frank Act tasks FSOC with monitoring the financial services marketplace in order to identify potential threats to the financial stability of the United States.[42] It also requires FSOC to collect information from member agencies to support its functions.[43] Section 404 of the Dodd-Frank Act directs the SEC to support this effort by collecting from investment advisers to private funds such information as the SEC deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.[44] FSOC may, if it deems necessary, direct the Office of Financial Research ("OFR") to collect additional information from nonbank financial companies.[45]

The Commissions are jointly proposing sections 1 and 2 of Form PF, and the SEC is proposing sections 3 and 4 of Form PF, to collect information necessary to permit FSOC to monitor private funds in order to identify any potential systemic threats arising from their activities. The information we currently collect about private funds and their activities is very limited and is not designed for the purpose of monitoring systemic risk.[46] We do not currently collect information, for example, about hedge funds' primary trading counterparties or significant market positions. The SEC also does not currently collect data to assess the risk of a run on a private liquidity fund, a risk that could transfer into registered money market funds and into the broader short term funding markets and those that rely on those markets.[47] While we are proposing to collect information on Form PF to assist FSOC in its monitoring obligations under the Dodd-Frank Act, the information collected on Form PF would be available to assist the Commissions in their regulatory programs, including examinations and investigations and investor protection efforts relating to private fund advisers.[48]

We have designed Form PF, in consultation with staff representing FSOC's members, to provide FSOC with such information so that it may carry out its monitoring obligations.[49] Based upon the information we propose to obtain from advisers about the private funds they advise, together with market data it collects from other sources, FSOC should be able to identify whether any private funds merit further analysis or whether OFR should collect additional information. We have not sought to design a form that would provide FSOC in all cases with all the information it may need to make a determination that a particular entity should be designated for supervision by the FRB.[50] Such a form, if feasible, likely would require substantial additional and more detailed data addressing a wider range of possible fund profiles, since it could not be tailored to a particular adviser, and would impose correspondingly greater burdens on private fund advisers. This type of information gathering may be better accomplished by OFR through targeted information requests to specific private fund advisers identified through Form PF, rather than through a general reporting form.[51]

The amount of information a private fund adviser would be required to report on the proposed form would vary based on both the size of the adviser and the type of funds it advises. This approach reflects our initial view after consulting with staff representing FSOC's members that a smaller private fund adviser may present less risk to the stability of the U.S. financial system and thus merit reporting of less information.[52] It also reflects our understanding that different types of private funds could present different implications for systemic risk and that reporting requirements should be appropriately calibrated.[53] As discussed in more detail below, Form PF would require more detailed information from advisers managing a large amount of hedge fund or liquidity fund assets. Less information would be required regarding advisers managing a large amount of private equity fund assets because, after a review of available literature and consultation with staff representing FSOC's members, it appears that private equity funds may present less potential risk to U.S. financial stability. The principal reasons for Form PF's proposed reporting specific to hedge funds, liquidity funds, and private equity funds are discussed below.

1. Hedge Funds

We believe that Congress expected hedge fund advisers would be required to report information to the Commissions under Title IV of the Dodd-Frank Act.[54] After consulting with

[41] *See* proposed Instructions to Form PF. Our proposed reporting thus complies with the Dodd-Frank Act directive that, in formulating systemic risk reporting and recordkeeping for investment advisers to mid-sized private funds, the Commission take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk. *See* section 408 of the Dodd-Frank Act. The Dodd-Frank Act also states that the SEC may establish different reporting requirements for different classes of fund advisers, based on the type or size of private fund being advised. *See* section 404 of the Dodd-Frank Act.

[42] *See* section 112(a)(2)(C) of the Dodd-Frank Act.

[43] *See* section 112(d)(1) of the Dodd-Frank Act.

[44] Section 404 of the Dodd-Frank Act requires that reports and records that the SEC mandates be maintained for these purposes include a description of certain categories of information, such as assets under management, use of leverage, counterparty credit risk exposure, and trading and investment positions for each private fund advised by the adviser.

[45] *See* sections 153 and 154 of the Dodd-Frank Act.

[46] We note that the SEC has proposed amendments to Form ADV that also would require private funds to report certain basic information, such as the fund's prime broker and its gross and net asset values. *See* Implementing Release, *supra* note 9.

[47] *See* section II.A.3 of this Release for a discussion of liquidity funds and their potential risks.

[48] *See* SEC section VI.A of this Release for a discussion of how the SEC could use proposed Form PF data for its regulatory activities and investor protection efforts.

[49] Industry participants (in response to FSOC Designation ANPR, *supra* note 18) acknowledged the potentially important function that such reporting may play in allowing FSOC to monitor the private fund industry more generally and to assess the extent to which any private funds may pose systemic risk more specifically. *See, e.g.,* Comment Letter of the Managed Funds Association (Nov. 5, 2010) ("the enhanced regulation of hedge fund managers and the markets in which they participate following the passage of the Dodd-Frank Act ensures that regulators will have a timely and complete picture of hedge funds and their activities"), Comment Letter of the Coalition of Private Investment Companies (Nov. 5, 2010) ("the registration and reporting structure for private funds subject to SEC oversight will result in an unprecedented range and depth of data to the Council, its constituent members and the newly created Office of Financial Research. From this information, in addition to the information gathered by the Council, the Council should be able to assemble a clear picture of the overall U.S. financial network and how private investment funds fit into it, both on an individual and overall basis"), Comment Letter of the Private Equity Growth Council (Nov. 5, 2010) ("regulators also now have the authority to require all private equity firms and private equity funds to provide any additional data needed to assess systemic risk") ("PE Council Letter"). Comment letters in response to the FSOC Designation ANPR are available at *http://www.regulations.gov.*

[50] *See* section 113 of the Dodd-Frank Act for a discussion of the matters that FSOC must consider when determining whether a U.S. nonbank financial company shall be supervised by the FRB and subject to prudential standards.

[51] Recordkeeping requirements specific to private fund advisers for systemic risk assessment purposes will be addressed in a future release pursuant to our authority under section 404 of the Dodd-Frank Act.

[52] We discuss the information we propose requiring smaller private fund advisers report in section II.D.1 of this Release.

[53] Congress recognized this need as well. *See supra* note 41.

[54] *See* Senate Committee Report, *supra* note 4, at 38 ("While hedge funds are generally not thought

staff representing FSOC's members, our initial view is that the investment activities of hedge funds [55] may have the potential to pose systemic risk for several reasons and, accordingly, that advisers to these hedge funds should provide targeted information on Form PF to allow FSOC to gain a better picture of the potential systemic risks posed by the hedge fund industry. Hedge funds may be important sources, and users, of liquidity in certain markets. Hedge funds often use financial institutions that may have systemic importance to obtain leverage and enter into other types of transactions. Hedge funds employ investment strategies that may use leverage, derivatives, complex structured products, and short selling in an effort to generate returns. Hedge funds also may employ strategies involving high volumes of trading and concentrated investments. These strategies, and in particular high levels of leverage, can increase the likelihood that the fund will experience stress or fail, and amplify the effects on financial markets.[56] While many hedge funds are not highly leveraged, certain hedge fund strategies employ substantial amounts of leverage.[57] Significant hedge fund failures (whether caused by their investment positions or use of leverage or both) could result in material losses at the financial institutions that lend to them if collateral securing this lending is inadequate.[58] These losses could have systemic implications if they require these financial institutions to scale back their lending efforts or other financing activities generally.[59] The simultaneous failure of several similarly positioned hedge funds could create contagion through the financial markets if the failing funds liquidate their investment positions in parallel at firesale prices, thereby depressing the mark-to-market valuations of securities that may be widely held by other financial institutions and investors.[60] Many of these concerns were raised in September 1998 by the near collapse of Long Term Capital Management, a highly leveraged hedge fund that experienced significant losses stemming from the 1997 Russian financial crisis.[61]

Accordingly, proposed Form PF would include questions about large hedge funds' investments, use of leverage and collateral practices, counterparty exposures, and market positions that are designed to assist FSOC in monitoring and assessing the extent to which stresses at those hedge funds could have systemic implications by spreading to prime brokers, credit or trading counterparties, or financial markets.[62] This information also is designed to help FSOC observe how hedge funds behave in response to certain stresses in the markets or economy. We request comment on this analysis of the potential systemic risk posed by hedge funds. Does it adequately identify the ways in which hedge funds might generate systemic risk? Are there other ways that hedge funds could create systemic risk? Are hedge funds not a potential source of systemic risk? Please explain your views and discuss their implications for the reporting we propose on Form PF.

2. Liquidity Funds

"Liquidity funds" also may be important to FSOC's monitoring and assessment of potential systemic risks, and the SEC believes information concerning them, therefore, should be included on Form PF.[63] The proposed Form PF would define a liquidity fund as a private fund that seeks to generate income by investing in a portfolio of short-term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors.[64] Liquidity funds thus can resemble money market funds, which are registered under the Investment Company Act of 1940 and seek to maintain a "stable" net asset value per share, typically $1, through the use of the "amortized cost" method of valuation.[65]

A report recently released by the President's Working Group on Financial Markets (the "PWG MMF Report") discussed in detail how certain features of registered money market funds, many of which are shared by liquidity funds, may make them susceptible to runs and thus create the potential for systemic risk.[66] The PWG MMF Report describes how some investors may consider liquidity funds to function as substitutes for registered money market funds and the potential for systemic risk that

to have caused the current financial crisis, information regarding their size, strategies, and positions could be crucial to regulatory attempts to deal with a future crisis. The case of Long-Term Capital Management, a hedge fund that was rescued through Federal Reserve intervention in 1998 because of concerns that it was "too-interconnected-to-fail," shows that the activities of even a single hedge fund may have systemic consequences.").

[55] *See* section II.B of this Release for a discussion of the definition of "hedge fund" in proposed Form PF. To prevent duplicative reporting, commodity pools that meet the definition of a private fund would be treated as hedge funds for purposes of Form PF. CPOs and CTAs that are not also registered as an investment adviser with the SEC would be required to file proposed Form CPO–PQR (for CPOs) and proposed Form CTA–PR (for CTAs) reporting similar information as Form PF requires for private fund advisers that advise one or more hedge funds. *See* Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, CFTC Release (Jan. __, 2011). Deeming commodity pools that meet the definition of a private fund to be hedge funds for purposes of Form PF, therefore, is designed to ensure that the CFTC obtains similar reporting regarding commodity pools that satisfy CFTC reporting obligations by the CPO or CTA filing proposed Form PF.

[56] *See* President's Working Group on Financial Markets, Hedge Funds, Leverage, and the Lessons of Long Term Capital Management (Apr. 1999), at 23, *available at http://www.ustreas.gov/press/releases/reports/hedgfund.pdf* ("PWG LTCM Report").

[57] *See* FSA Survey, *supra* note 27, at 5 (showing borrowings as a multiple of net equity ranging from 100% in strategies such as managed futures to 1400% in the fixed income arbitrage hedge fund strategy).

[58] *See, e.g., Id.;* Ben S. Bernanke, Hedge Funds and Systemic Risk, Speech at the Federal Reserve Bank of Atlanta's 2006 Financial Market's Conference (May 16, 2006), *available at http://www.federalreserve.gov/newsevents/speech/bernanke20060516a.htm* ("Bernanke"); Nicholas Chan *et al., Systemic Risk and Hedge Funds,* National Bureau of Economic Research Working Paper 11200 (Mar. 2005), *available at http://www.nber.org/papers/w11200.pdf;* Andrew Lo, *Regulatory Reform in the Wake of the Financial Crisis of 2007–2008,* 1 J. Fin. Econ. P. 4 (2009); and John Kambhu *et al., Hedge Funds, Financial Intermediation, and Systemic Risk,* FRBNY Econ. P. Rev. (Dec. 2007) ("Kambhu").

[59] Kambhu, *supra* note 58; Financial Stability Forum, Update of the FSF Report on Highly Leveraged Institutions (May 19, 2007).

[60] *See* Bernanke, *supra* note 58; David Stowell, An Introduction to Investment Banks, Hedge Funds & Private Equity: The New Paradigm 259–261 (2010).

[61] *See* PWG LTCM Report, *supra* note 56.

[62] *See* section II.D.2 of this Release.

[63] Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the form. Section 3 of the form, which would require more specific reporting regarding liquidity funds, would only be required by the SEC.

[64] *See* section II.B of this Release for a discussion of the definition of "liquidity fund" in proposed Form PF.

[65] Under the amortized cost method, securities are valued at acquisition cost, with adjustments for amortization of premium or accretion of discount, instead of at fair market value. To prevent substantial deviations between the amortized cost share price and the mark-to-market per-share value of the fund's assets (its "shadow NAV"), a money market fund must periodically compare the two. If there is a difference of more than one-half of 1 percent (typically, $0.005 per share), the fund must re-price its shares, an event colloquially known as "breaking the buck." *See Money Market Fund Reform,* Investment Company Act Release No. 28807 (June 30, 2009), 74 FR 32688 (July 8, 2009), at section III ("MMF Reform Proposing Release").

[66] Report of the President's Working Group on Financial Markets: Money Market Fund Reform Options (Oct. 2010), *available at http://treas.gov/press/releases/docs/10.21%20PWG%20Report%20Final.pdf.* The PWG MMF Report states that the work of the President's Working Group on Financial Reform relating to money market funds is now being taken over by FSOC. The SEC has discussed previously registered money market funds' susceptibility to runs. *See* MMF Reform Proposing Release, *supra* note 65, at section III.

results.[67] During the financial crisis, several sponsors of "enhanced cash funds," a type of liquidity fund, committed capital to those funds to prevent investors from realizing losses in the funds.[68] The fact that sponsors of certain liquidity funds felt the need to support the stable value of those funds suggests that they may be susceptible to runs like registered money market funds.

Registered money market funds are subject to extensive regulation under Investment Company Act rule 2a–7, which imposes credit-quality, maturity, and diversification requirements on money market fund portfolios designed to ensure that the funds' investing remains consistent with the objective of maintaining a stable net asset value.[69] While liquidity funds are not required to comply with rule 2a–7, we understand that many liquidity funds can suspend redemptions or impose gates on shareholder redemptions upon indications of stress at the fund. As a result, the risk of runs at liquidity funds may be mitigated. The information that the SEC is proposing to require advisers to liquidity funds report is designed to allow FSOC to assess liquidity funds' susceptibility to runs and ability to otherwise pose systemic risk.

The SEC requests comment on this analysis of the potential systemic risk posed by liquidity funds. Does it adequately identify the ways in which liquidity funds might generate systemic risk? Are there other ways that liquidity funds could create systemic risk? Do liquidity funds lack any potential to create systemic risk? Please explain your views and discuss their implications for the reporting proposed on Form PF.

3. Private Equity Funds

It is the SEC's initial view, after consultation with staff representing FSOC's members, that the activities of private equity funds, certain of their portfolio companies, or creditors involved in financing private equity transactions also may be important to the assessment of systemic risk and, therefore, that large advisers to these funds should provide targeted information on Form PF to allow FSOC to conduct basic systemic risk monitoring.[70]

One aspect of the private equity business model that some have identified as potentially having systemic implications is its method of financing buyouts of companies. Leveraged private equity transactions often rely on banks to provide bridge financing until the permanent debt financing for the transaction is completed, whether through a syndicated bank loan or issuance of high yield bonds by the portfolio company or both.[71] When market conditions suddenly turn, these institutions can be left holding this potentially risky bridge financing (or committed to provide the final bank financing, but no longer able to syndicate or securitize it and thus forced to hold it) at precisely the time when credit market conditions, and therefore the institutions' own general exposure to private equity transactions and other committed financings, have worsened.[72] For example, prior to the recent financial crisis, a trend in private equity transactions was for private equity firms to enter into buyout transactions with seller-favorable financing conditions and terms that placed much of the risk of market deterioration after the transaction agreement was signed on the financing institutions and the private equity adviser.[73]

In addition, some industry observers have noted that the leveraged buyout investment model of imposing significant amounts of leverage on their portfolio companies in an effort to meet investment return objectives subjects those portfolio companies to greater risk in the event of economic stress.[74] If private equity funds conduct a

[67] PWG MMF Report, *supra* note 66, at section 3.h ("These vehicles typically invest in the same types of short-term instruments that MMFs hold and share many of the features that make MMFs vulnerable to runs, so growth of unregulated MMF substitutes would likely increase systemic risks. However, such funds need not comply with rule 2a–7 or other [Investment Company Act] protections and in general are subject to little or no regulatory oversight. In addition, the risks posed by MMF substitutes are difficult to monitor, since they provide far less market transparency than MMFs.").

[68] *See, e.g.,* Sree Vidya Bhaktavatsalam, *BlackRock Earnings Beat Estimates on Hedge-Fund Fees,* Bloomberg (Jan. 17, 2008) ("During the fourth quarter, BlackRock spent $18 million to support the net asset value of two enhanced cash funds whose values fell as the credit markets got squeezed"); Sree Vidya Bhaktavatsalam & Christopher Condon, *Federated Investors Bails Out Cash Fund After Losses,* Bloomberg (Nov. 20, 2007).

[69] *See* 17 CFR 270.2a–7.

[70] *See* section II.B of this Release for a discussion of the definition of "private equity fund" in Form PF. Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the form. Section 4 of the form, which would require more specific reporting regarding private equity funds, would only be required by the SEC.

[71] *See* Steven M. Davidoff, *The Failure of Private Equity,* 82 S. Cal. L. Rev. 481, 494 (2009) ("Davidoff").

[72] *See* Senior Supervisors Group, *Observations on Risk Management Practices during the Recent Market Turbulence,* at 2 (Mar. 6, 2008), *available at http://www.occ.gov/publications/publications-by-type/other-publications/pub-other-risk-mgt-practices-2008.pdf* ("Firms likewise found that they could neither syndicate to external investors their leveraged loan commitments to corporate borrowers nor cancel their commitments to fund those loans despite material and adverse changes in the availability of funding from other investors in the market"); BIS Private Equity Paper, *supra* note 35, at 1–2 ("Conditions in the leveraged loan market deteriorated in the second half of 2007, and demand for leveraged finance declined sharply. An initial temporary adverse investor reaction to loose lending terms and low credit spreads prevailing in early 2007 became more protracted over the course of the second half of the year as the turbulence in financial markets deepened and contraction in demand for leveraged loans became more severe. Global primary market leveraged loan volumes shrank by more than 50% in the second half of 2007. The contraction in demand for leveraged loans revealed substantial exposure of arranger banks to warehouse risk. Undistributed loans will contribute to increased funding costs and capital requirements for banks in 2008, on top of other offbalance sheet products that they have been forced to bring on-balance sheet. Moreover, with leveraged loan indices trading close to 90 cents on a dollar in March 2008, realisation of warehouse risks has resulted in significant mark to market losses to banks"); Bank of England, *Financial Stability Report,* at 19 (Oct. 2007), *available at http://www.bankofengland.co.uk/publications/fsr/2007/fsrfull0710.pdf* ("Bank of England") ("The near closure of primary issuance markets for collateralised loan obligations, and an increase in risk aversion among investors, left banks unable to distribute leveraged loans that they had originated earlier in the year. This exacerbated a problem banks already faced, as debt used to finance a number of high-profile private-equity sponsored leveraged buyouts (LBOs) had remained on their balance sheets.").

[73] *See* Davidoff, *supra* note 71, at 495–496 (noting the trend in private equity transaction agreements signed prior to the financial crisis to have no financing condition and to have limited "market outs" and "lender outs" in the debt commitment letters and further noting that "by agreeing to a more certain debt commitment letter and providing bridge financing, the banks now took on the risk of market deterioration between the time of signing and closing."). Bank regulators and industry observers also noted the trend in private equity financing prior to the financial crisis for banks to enter into "covenant lite" loans, which did not require borrowers to meet certain performance metrics for cash flow or profits. *See The Economics of Private Equity Investments: Symposium Summary,* FRBSF Economic Letter (Feb. 29, 2008), *available at http://www.frbsf.org/publications/economics/letter/2008/el2008-08.html* (noting growth in the first half of 2007 in such "covenant lite" loans); Financial Stability Forum, Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience, at 7 (Apr. 7, 2008), *available at http://www.financialstabilityboard.org/publications/r_0804.pdf* ("Another segment that saw rapid growth in volume accompanied by a decline in standards was the corporate leveraged loan market, where lenders agreed to weakened loan covenants to obtain the business of private equity funds."); Bank of England, *supra* note 73, at 27 ("Market intelligence suggested that private equity sponsors had considerable market power to impose aggressive capital structures, tight spreads and weak covenants because investor demand was so strong. But in August, the flow of new LBOs came to a virtual standstill and the debt of a sequence of high-profile companies could not be sold [by banks].").

[74] *See, e.g., Paying the Price,* The Economist (Jul. 31, 2010) ("Pension funds could decide to make a geared bet on equities by borrowing money and investing in the S&P 500 index. But they would understandably regard such a strategy as highly risky. Giving money to private-equity managers, who then use debt to acquire quoted companies, is viewed in an entirely different light but amounts to the same gamble"). *See also* BIS Private Equity Paper, *supra* note 35, at 24–25.

leveraged buyout of an entity that could be systemically important, information about that investment could be important in FSOC monitoring and assessing potential systemic risk.[75]

For these reasons, the SEC believes certain information on the activities of private equity funds and their portfolio companies is relevant for purposes of monitoring potential systemic risk.[76] In addition, based on the SEC's consultations with staff representing FSOC's members, private equity transaction financings, and their interconnected impact on the lending institutions, could be a useful area for FSOC to monitor in fulfilling its duty to gain a comprehensive picture of the financial services marketplace in order to identify potential threats to the stability of the U.S. financial system.

The SEC requests comment on this analysis of the potential systemic risk posed by the activities of private equity funds. Does it identify the ways in which private equity fund activities might generate systemic risk? Are there other ways that private equity funds or their activities could create systemic risk? Is the preliminary view that private equity fund activities may have less potential to create systemic risk than hedge funds and liquidity funds correct? Many advisers to private equity funds have noted that certain features of the private equity business model, such as its reliance on long-term capital commitments from investors, lack of substantial debt at the private equity fund level, and investment primarily in the equity of a diverse range of private companies, mitigate its potential to pose systemic risk.[77] Do private equity funds not have any potential to create systemic risk? Is the monitoring of private equity fund activities unnecessary to assess systemic risk generally? Please explain your views and discuss their implications for the reporting proposed on Form PF.

[75] For example, some noted the role of private equity investments in companies that the government ultimately bailed out during the financial crisis. *See, e.g.,* Casey Ross, *Cerberus' Success Hurt by a Pair of Gambles,* The Boston Globe (Mar. 25, 2010) (discussing private equity investments in GMAC and Chrysler Corp., both of which received government bailouts); and Louise Story, *For Private Equity, A Very Public Disaster,* N.Y. Times (Aug. 8, 2009) (same).

[76] *See* section II.D.4 of this Release for a discussion of the information we propose requiring certain private equity fund advisers report on Form PF.

[77] *See, e.g.,* PE Council Letter, *supra* note 49; Testimony of Mark Tresnowksi, General Counsel, Madison Dearborn Partners, before the Senate Banking Subcommittee on Securities, Insurance and Investment, July 15, 2009.

B. Who Must File Form PF

We propose that any investment adviser registered or required to register with the SEC that advises one or more private funds must file a Form PF with the SEC.[78] A CPO or CTA that also is a registered investment adviser that advises one or more private funds would be required to file Form PF with respect to any advised commodity pool that is a "private fund." By filing Form PF with respect to these private funds, a CPO will be deemed to have satisfied certain of its filing requirements for these funds.[79] Under these rules, most private fund advisers would be required to complete only section 1 of Form PF, providing certain basic information regarding any hedge funds they advise in addition to information about their private fund assets under management and more generally about their funds' performance and use of leverage. The information collected under section 1 of Form PF is described in further detail in section II.D.1 of this Release. Certain larger private fund advisers would be required to complete additional sections of Form PF, which require more detailed information.

Three types of "Large Private Fund Advisers" would be required to complete certain additional sections of Form PF:[80]

- Advisers managing hedge funds that collectively have at least $1 billion in assets as of the close of business on any day during the reporting period for the required report;
- Advisers managing a liquidity fund and having combined liquidity fund and registered money market fund assets of at least $1 billion as of the close of business on any day during the reporting period for the required report; and
- Advisers managing private equity funds that collectively have at least $1 billion in assets as of the close of business on the last day of the quarterly reporting period for the required report.

1. Types of Funds

Proposed Form PF would define "hedge fund" as any private fund that (1) has a performance fee or allocation calculated by taking into account unrealized gains; (2) may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (3) may sell securities or other assets short.[81] As noted above, "liquidity fund" would be defined as any private fund that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors.[82] "Private equity fund" would be defined as any private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund or venture capital fund and does not provide investors with redemption rights in the ordinary course.[83]

Our proposed definition of hedge fund would cover any private fund that has any one of three common characteristics of a hedge fund: A performance fee using market value (instead of only realized gains), high leverage or short selling. We are not aware of any standard definition of a hedge fund,[84] although we note that our proposed definition is broadly based on those used in the FSA survey and in the IOSCO report described in section I.B above and thus generally would promote international consistency in

[78] Proposed Advisers Act rule 204(b)–1.

[79] Proposed CEA rule 4.27(d). A CPO registered with the CFTC that is also registered as a private fund adviser with the SEC will be deemed to have satisfied its filing requirements for Schedules B and C of proposed Form CPO–PQR by completing and filing the applicable portions of Form PF for each of its commodity pools that satisfy the definition of "private fund" in the Dodd-Frank Act.

[80] *See* proposed Instruction 3 to Form PF.

[81] *See* proposed Glossary of Terms to Form PF. This definition also is the same as the SEC has proposed in amendments to Form ADV. *See* Implementing Release, *supra* note 9. For purposes of the definition, the fund should not net long and short positions in calculating its borrowings but should include any borrowings or notional exposure of another person that are guaranteed by the fund or that the fund may otherwise be obligated to satisfy. In addition, a commodity pool that meets the definition of a private fund is treated as a hedge fund for purposes of Form PF.

[82] *See* proposed Glossary of Terms to Form PF.

[83] *See* proposed Glossary of Terms to Form PF. Proposed Form PF would define "real estate fund" as any private fund that is not a hedge fund, that does not provide investors with redemption rights in the ordinary course and that invests primarily in real estate and real estate-related assets. Proposed Form PF would define "securitized asset fund" as any private fund that is not a hedge fund and that issues asset backed securities and whose investors are primarily debt-holders. These definitions are designed to encompass entities that we believe are typically considered real estate or securitized asset funds, respectively, and are primarily intended to exclude these types of funds from our definition of private equity fund to improve the quality of data reported on Form PF relating to private equity funds. Proposed Form PF would define "venture capital fund" as any private fund meeting the definition of venture capital fund in rule 203(l)-1 of the Advisers Act for consistency. *See* proposed Glossary of Terms to Form PF. *See also* Private Fund Exemption Release, *supra* note 9, for a discussion of proposed Advisers Act rule 203(l)–1.

[84] *See, e.g. Goldstein* v. *SEC,* 451 F.3d 873 (DC Cir. 2006) ("'Hedge funds' are notoriously difficult to define. The term appears nowhere in the federal securities laws, and even industry participants do not agree upon a single definition.")

hedge fund reporting.[85] Moreover, we believe that any fund meeting this definition is an appropriate subject for this higher level of reporting even if the fund would not otherwise be considered a hedge fund.

The Commissions request comment on the hedge fund definition proposed in Form PF.[86] Does this proposed definition capture the appropriate features of funds that should be subject to more detailed reporting as "hedge funds"? Many private funds sell short. Is the bright line of classifying *any* private fund that engages in short selling as a hedge fund appropriate? Is the proposed leverage threshold for hedge funds set at the appropriate level? One alternative approach we could take is to not define a hedge fund in Form PF and simply require that all advisers managing in excess of $1 billion in private fund assets (regardless of strategy) complete section 2 of Form PF. Would this be a more effective approach? For purposes of Form PF, a commodity pool satisfying the definition of a "private fund" is categorized as a hedge fund. Is this treatment appropriate?

The proposed definition of liquidity fund is designed to capture all potential substitutes for money market funds because we believe these funds may be susceptible to runs and otherwise pose systemic risk that FSOC will want to monitor. The SEC recognizes that its proposed definition of liquidity fund potentially could capture some short-term bond funds. Are there ways that the SEC could define a liquidity fund to capture all potential substitutes for money market funds, but not short-term bond funds? The SEC requests comment on the liquidity fund definition proposed in Form PF.

Our proposed definition of a private equity fund is intended to distinguish private equity funds from other private funds based upon the lack of redemption rights and their not being engaged in certain investment strategies (such as securitization, real estate or venture capital), while these funds would typically have performance fees based on realized gains. Has the SEC appropriately distinguished private equity funds from other types of private funds in its proposed definition? Should others be excluded? The SEC requests comment on the private equity fund definition proposed in Form PF.

2. Large Private Fund Adviser Thresholds

As noted above, we are proposing $1 billion in hedge fund assets under management as the threshold for large hedge fund adviser reporting, $1 billion in combined liquidity fund and registered money market fund assets under management as the threshold for large liquidity fund adviser reporting, and $1 billion in private equity fund assets under management as the threshold for large private equity fund adviser reporting. Advisers would be required to measure whether these thresholds have been crossed daily for hedge funds and liquidity funds and quarterly for private equity funds based on our belief that, as a matter of ordinary business practice, advisers are aware of hedge fund and liquidity fund assets under management on a daily basis, but are likely to be aware of private equity fund assets under management only on a quarterly basis. We designed these thresholds so that the group of Large Private Fund Advisers that would be included based on the proposed thresholds is relatively small in number but represents the large majority of their respective industries based on assets under management. For example, we understand that the approximately 200 U.S.-based advisers managing at least $1 billion in hedge fund assets represent over 80 percent of the U.S. hedge fund industry based on assets under management.[87] Similarly, SEC staff estimates that the approximately 250 U.S.-based advisers managing over $1 billion in private equity fund assets represent approximately 85 percent of the U.S. private equity fund industry based on committed capital.[88]

The SEC is proposing that private fund advisers combine liquidity fund and registered money market fund assets for purposes of determining whether the adviser meets the threshold for more extensive reporting regarding its liquidity funds because it understands that an adviser's liquidity funds and registered money market funds often pursue similar strategies and invest in the same securities and thus are subject to many of the same risks. Historically, most advisers of enhanced cash funds or other unregistered money market funds also advised a substantial amount of registered money market fund assets, and so the SEC's criteria for liquidity fund reporting is expected to encompass most significant managers of liquidity funds, which it estimates number around 80 advisers.[89]

We believe that requiring basic information from all advisers about all private funds but more extensive and detailed information only from advisers with these amounts of assets under management in hedge funds, private equity funds, and liquidity funds would allow FSOC to effectively conduct basic monitoring for potential systemic risk in these private fund industries and to identify areas where OFR may want to obtain additional information. In addition, requiring that only these Large Private Fund Advisers complete additional reporting requirements under Form PF would provide systemic risk information for most private fund assets while minimizing burdens on smaller private fund advisers that are less likely to pose systemic risk concerns. The proposed approach thus incorporates Congress' directive in section 408 of the Dodd-Frank Act to take into account the size, governance, and investment strategy of advisers to mid-sized private funds in determining whether they pose systemic risk and formulating systemic risk reporting and recordkeeping requirements for private funds.[90]

[85] The FSA survey is voluntary and does not proscriptively define a hedge fund, but states that if a fund generally satisfies a number of the following criteria, it should be deemed to fall within the scope of the FSA hedge fund survey: (1) Employs investment management techniques that can include the use of short selling, derivatives, and leverage; (2) takes in external investor money; (3) are not UCITS funds; (4) pursue absolute returns; (5) charge performance-based fees; (6) have broader mandates than traditional funds which give managers more flexibility to shift strategy; (7) have higher trading volumes/fund turnover; and (8) frequently set a high minimum investment limit. The IOSCO Report generally considered as a hedge fund all investment schemes displaying a combination of some of the following characteristics: (1) Borrowing and leverage restrictions are not applied; (2) significant performance fees are paid to the manager in addition to an annual management fee; (3) investors are typically permitted to redeem their interests periodically, *e.g.,* quarterly, semi-annually or annually; (4) often significant 'own' funds are invested by the manager; (5) derivatives are used, often for speculative purposes, and there is an ability to short sell securities; and (6) more diverse risks or complex underlying products are involved. *See* IOSCO Report, *supra* note 24, at 4–5.

[86] The SEC previously defined private fund for purposes of registration of advisers to hedge funds by focusing on the structure of the fund to differentiate it from other pooled investment vehicles, while the definition of hedge fund we propose today for purposes of Form PF reporting focuses on the strategy of the fund in order to monitor trading strategies and behaviors which could contribute to systemic risk. *See Registration under the Advisers Act of Certain Hedge Fund Advisers,* Investment Advisers Act Release No. 2333 (Dec. 2, 2004), 69 FR 72054 (Dec. 10, 2004) (rulemaking vacated, *Goldstein,* 451 F.3d at 884).

[87] *See* HFI, *supra* note 20.

[88] Preqin. The Preqin data relating to private equity fund committed capital is available in File No. S7–05–11.

[89] *See, e.g.,* iMoneyNet, Enhanced Cash Report (3rd quarter 2009). The estimate of the number of large liquidity fund advisers is based on the number of advisers with at least $1 billion in registered money market fund assets under management.

[90] We note that the SEC has proposed to collect information regarding the governance of private fund advisers through Form ADV. *See* Implementing Release, *supra* note 9.

We request comment on the proposed thresholds. Are there more appropriate dividing lines as to when a private fund adviser should be required to report more information? Should any of the assets under management thresholds be lower or higher? Are the daily (for hedge fund and liquidity fund managers) and quarterly (for private equity fund managers) measurement periods for the assets under management thresholds set appropriately? Should we, as proposed, base the threshold on the amount of assets under management? If not, what should we base it on?

We request comment on our proposed approach of only requiring these Large Private Fund Advisers to report additional information on Form PF. Will collecting the information required by sections 2, 3, and 4 of Form PF only from advisers managing in excess of these asset thresholds provide adequate information about potential systemic risk in these industries? Should we instead require that all private fund advisers registered with the SEC complete all of the information on Form PF appropriate to the type of private funds they advise regardless of fund size or assets under management? Are there advisers to other types of private funds that should be required to report more information on Form PF? For example, should advisers to other types of private fund report more information if they manage in excess of a certain threshold of that type of private fund assets?

3. Aggregation of Assets Under Management

For purposes of determining whether an adviser is a Large Private Fund Adviser for purposes of Form PF, each adviser would have to aggregate together:

- Assets of managed accounts advised by the firm that pursue substantially the same investment objective and strategy and invest in substantially the same positions as the private fund ("parallel managed accounts");[91] and
- Assets of that type of private fund advised by any of the adviser's "related persons."[92]

These proposed aggregation requirements are designed to prevent an adviser from avoiding the proposed Large Private Fund Adviser reporting requirements by re-structuring the manner of providing private fund advice internally within the private fund manager group. The adviser also would be required to exclude any assets in any account that are solely invested in other funds (*i.e.,* internal or external fund of funds) in order to avoid duplicative reporting.[93] We request comment on these proposed aggregation requirements. Would these proposed aggregation rules appropriately meet our goal of preventing improper avoidance of the reporting requirements while giving a complete picture of private fund assets managed by a particular private fund adviser group? Would aggregating in a different manner be more effective at meeting our goal? Should funds that invest most (*e.g.,* 95 percent), but not all, of their assets in other funds be excluded from Form PF reporting? Would excluding such funds still provide FSOC with a complete enough picture of private fund activities to have an adequate baseline for systemic risk monitoring purposes?

If the adviser's principal office and place of business is outside the United States, the adviser could exclude any private fund that during the last fiscal year was neither a United States person nor offered to, or beneficially owned by, any United States person.[94] This aspect of the proposed form is designed to allow an adviser to report with respect to only those private funds that are more likely to implicate U.S. regulatory interests. We request comment on this aspect of the proposed form. Should we require different reporting relating to foreign advisers or foreign private funds?

4. Reporting for Affiliated and Subadvised Funds

To provide private fund advisers with reporting flexibility and convenience, the adviser could, but is not required to, report the private fund assets that it manages and the private fund assets that its related persons manage on a single Form PF.[95] This would allow affiliated entities that share reporting and risk management systems to report jointly while also permitting affiliated entities that operate separately to report separately. With respect to sub-advised funds, to prevent duplicative reporting, only one adviser would report information on Form PF with respect to that fund. For reporting efficiency and to prevent duplicative reporting, we are proposing that if an adviser completes information on Schedule D of Form ADV with respect to any private fund, the same adviser would be responsible for reporting on Form PF with respect to that fund.[96] We request comment on this approach. Should we not allow advisers to file a consolidated form with its related persons? Are there other persons related to a private fund adviser that should also be able to report on Form PF on a consolidated basis? For example, should we adjust Form PF to permit consolidated reporting with related persons that are exempt reporting advisers in the event an adviser chooses to voluntarily report exempt reporting adviser information? Should we allow a different arrangement on reporting of sub-advised funds? If so, what would those arrangements be?

5. Exempt Reporting Advisers and Other Advisers Not Registered With the SEC

We are proposing that only private fund advisers registered with the SEC (including those that are also registered with the CFTC as CPOs or CTAs) file Form PF.[97] The Dodd-Frank Act created exemptions from SEC registration under the Advisers Act for advisers solely to venture capital funds or for advisers to private funds that in the aggregate have less than $150 million in assets under management in the United States ("exempt reporting advisers").[98] We are not proposing that exempt reporting advisers be required to file Form PF.[99] We believe that Congress' determination to exempt these advisers from SEC registration indicates Congress' belief that they are sufficiently unlikely to pose systemic risk that regular reporting of detailed information may not be necessary.[100] Based on consultation

[91] *See* proposed Instructions 3, 5, and 6 to Form PF; and proposed Glossary of Terms to Form PF. *See also* definitions of "hedge fund assets under management," "liquidity fund assets under management," and "private equity fund assets under management" in the proposed Glossary of Terms to Form PF.

[92] *See* proposed Instructions 3 and 5 to Form PF. "Related person" is defined generally as: (1) All of the adviser's officers, partners, or directors (or any person performing similar functions); (2) all persons directly or indirectly controlling, controlled by, or under common control with the adviser; and (3) all of the adviser's employees (other than employees performing only clerical, administrative, support or similar functions). *See* proposed Glossary of Terms to Form PF and Glossary of Terms to Form ADV. The adviser would be permitted, but not required, to file one consolidated Form PF for itself and its related persons. *See* section II.B.4 of this Release below.

[93] *See* proposed Instruction 7 to Form PF.

[94] *See* proposed Instruction 1 to Form PF. "United States person" would have the meaning provided in proposed rule 203(m)-1 of the Advisers Act, and "principal office and place of business" would have the same meaning as in Form ADV. *See* Private Fund Exemption Release, *supra* note 9.

[95] *See* proposed Instruction 2 to Form PF. *See supra* note 92 for the definition of "related person."

[96] *See* proposed Instruction 4 to Form PF.

[97] *See* proposed Advisers Act rule 204(b)–1.

[98] *See* Private Fund Exemption Release, *supra* note 9; Implementing Release, *supra* note 9.

[99] To the extent an exempt reporting adviser is registered with the CFTC as a CPO or CTA, that adviser would be obligated to file either proposed Form CPO–PQR or CTA–PR, respectively.

[100] *See* Senate Committee Report, *supra* note 4, at 74 ("The Committee believes that venture capital

Continued

with staff representing FSOC's members and on the basic information that the SEC has proposed requiring exempt reporting advisers report to the SEC on Form ADV, the SEC is not proposing to extend Form PF reporting to these advisers.

Our proposed rules, however, would require some advisers managing less than $150 million in private fund assets to report limited information on Form PF. While Congress exempted from registration with the SEC advisers *solely* to private funds that in the aggregate have less than $150 million in assets under management, it provided no such exemption for advisers with less than $150 million in private fund assets under management that also, for example, advise individual clients with over $100 million in assets under management. Because this latter group of advisers is registered with the SEC and thus is subject to the full range of investor protection efforts that accompany registration, and because of the limited burden of the basic reporting, we believe it is appropriate to require these advisers to complete and file section 1 of Form PF. We request comment on this approach. Should we require that exempt reporting advisers file Form PF?[101] Why or why not? If so, which portions of Form PF should we require that exempt reporting advisers complete?

C. Frequency of Reporting

The Commissions propose to require that all private fund advisers other than the Large Private Fund Advisers discussed above complete and file a Form PF on an annual basis. A newly registering adviser's initial Form PF filing would be submitted within 15 days of the end of its next occurring calendar quarter after registering with the SEC so that FSOC can begin including this data in its analysis as soon as possible.[102] Annual updates would be due no later than the last day on which the adviser may timely file its annual updating amendment to Form ADV (currently, 90 days after the end of the adviser's fiscal year).[103] This frequency of reporting would allow the Commissions and FSOC to periodically monitor certain key information relevant to assessing systemic risk posed by these private funds on an aggregate basis. It also would allow these advisers to file amendments at the same time as they file their Form ADV annual updating amendment, which may make certain aspects of the reporting more efficient, such as reporting assets under management. Finally, this timing will facilitate FSOC's compilation and analysis of Form PF and Form ADV data for these filers since both sets of data will be reported as of the same date.

Large Private Fund Advisers would be required to complete and file a Form PF no later than 15 days after the end of each calendar quarter.[104] Our preliminary view is that, unlike for smaller private fund advisers, quarterly reporting for Large Private Fund Advisers is necessary in order to provide FSOC with timely data to identify emerging trends in systemic risk. We understand that hedge fund advisers already collect and calculate much of the information that would be required by Form PF relating to hedge funds on a quarterly basis.[105] As a result, quarterly reporting on Form PF would coincide with most hedge fund advisers' internal reporting cycles and leverage data collection systems and processes already existing at these advisers. In addition, we believe that most liquidity fund advisers collect on a monthly basis much of the information that we are proposing be reported in section 3 of Form PF and thus quarterly reporting should be relatively efficient for these advisers. We anticipate that Large Private Fund Advisers would be able to collect and file this information within 15 days after the end of each quarter, which is sufficiently timely for FSOC's use in conducting systemic risk monitoring.

Advisers would be required to file Form PF to report that they are transitioning to only filing Form PF annually with the Commissions or to report that they no longer meet the requirements for filing Form PF no later than the last day on which the adviser's next Form PF update would be timely.[106] This would allow us to determine promptly whether an adviser's discontinuance in reporting is due to it no longer meeting the form's reporting thresholds as opposed to a lack of attention to its filing obligations. Advisers also would be able to avail themselves of a temporary hardship exemption in a similar manner as with other Commission filings if they are unable to file Form PF electronically in a timely manner due to unanticipated technical difficulties.[107]

We request comment on our proposed filing frequency. Are the filing requirements for private fund advisers frequent enough to assess high-level systemic risk posed by private funds? Should smaller private fund advisers have to file more frequently or less frequently? Should Large Private Fund Advisers be required to file Form PF more frequently (such as monthly) or less frequently (such as annually or semiannually)? Is 90 days for an annual update or 15 days for a quarterly update too long to ensure reporting of timely information? Would more or less time be more appropriate? Specifically, would 15 days be enough time for Large Private Fund Advisers to prepare and file quarterly reports? Is there information in the form that should be amended promptly if it becomes inaccurate? Should Large Private Fund Advisers be required to file Form PF as of the end of each calendar quarter or as of the end of each fiscal quarter?

Currently, we anticipate that the proposed rules requiring filing of Form PF would have a compliance date of December 15, 2011, at which time Large Private Fund Advisers would begin filing 15 days after the end of each quarter (*i.e.,* Large Private Fund Advisers would need to make their initial Form PF filing by January 15, 2012). This timing should allow sufficient time for Large Private Fund Advisers to develop systems for collecting the information required on Form PF and prepare for filing. We currently anticipate that this timeframe also would give the SEC sufficient time to create and program a system to accept filings of Form PF.[108] We are proposing

funds * * * do not present the same risks as the large private funds whose advisers are required to register with the SEC under this title. Their activities are not interconnected with the global financial system, and they generally rely on equity funding, so that losses that may occur do not ripple throughout world markets but are borne by fund investors alone."). *See also* Private Fund Exemption Release, *supra* note 9.

[101] Section 404 of the Dodd-Frank Act states that the SEC "shall issue rules requiring *each investment adviser to a private fund* to file reports containing such information as the [SEC] deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk," (emphasis added).

[102] *See* proposed rule 204(b)–1(a).

[103] *See* proposed Advisers Act rule 204(b)–1(e).

[104] *See* proposed Instruction 7 to Form PF.

[105] *See* Report of the Asset Manager's Committee to the President's Working Group on Financial Markets, Best Practices for the Hedge Fund Industry (Jan. 15, 2009), *available at http://www.amaicmte.org/Public/AMC%20Report%20-%20Final.pdf* (discussing best practices on disclosing to investors performance data, assets under management, risk management practices (including on asset types, geography, leverage, and concentrations of positions) with which SEC staff understands many hedge funds comply).

[106] *See* proposed Instruction 8 to Form PF.

[107] *See* proposed rule 204(b) 1(f). The adviser would check the box in Section 1a of Form PF indicating that it was requesting a temporary hardship exemption and complete Section 5 of Form PF no later than one business day after the electronic Form PF filing was due and submit the filing that is the subject of the Form PF paper filing in electronic format with the Form PF filing system no later than seven business days after the filing was due.

[108] The SEC will work closely with the firm it selects to create and program a system for Form PF

that the rules allow smaller private fund advisers until 90 days after the end of their first fiscal year occurring on or after the compliance date of the proposed rule to file their first Form PF (with the expectation that this would result in smaller private fund advisers with a December 31 fiscal year end filing their first Form PF by March 31, 2012) because we anticipate that some of these advisers may require more time to prepare for their initial Form PF filing and so that the first group of private fund advisers filing Form PF would all be reporting based generally on information as of December 31, 2011.[109] Under this proposed compliance date and transition rule, smaller private fund advisers would have at least eight months after adoption of the proposed form, depending on their fiscal year end, to file their first Form PF. We request comment on when advisers should be required to comply with the proposed rules and file Form PF. Do the compliance dates and transition times that we have proposed provide sufficient time for smaller advisers and Large Private Fund Advisers to prepare for filing?

D. Information Required on Form PF

The questions contained in proposed Form PF reflect relevant requirements and considerations under the Dodd-Frank Act, consultations with staff representing FSOC's members, and the Commissions' experience in regulating those private fund advisers that are already registered with the Commissions. As discussed above, with respect to hedge fund advisers in particular, the information we propose requiring registered advisers to file on Form PF also is broadly based on the guidelines discussed in the IOSCO Report with many of the more detailed items generally tracking questions contained in the surveys of large hedge fund advisers conducted by the FSA and other IOSCO members.[110] We expect that the information collected on Form PF would assist FSOC in monitoring and assessing any systemic risk, as discussed in section II.A above, that may be posed by private funds. We discuss below the information that Form PF would require.

1. Section 1

Section 1 would apply to all investment advisers required to file Form PF. Item A of Section 1a seeks identifying information about the adviser, such as its name and the name of any of its related persons whose information is also reported on the adviser's Form PF. Section 1a also would require reporting of basic aggregate information about the private funds managed by the adviser, such as total and net assets under management, and the amount of those assets that are attributable to certain types of private funds.[111] This identifying information would assist us and FSOC in monitoring the amount of assets managed by private fund advisers and the general distribution of those assets among various types of private funds.

Section 1b of Form PF would elicit certain identifying and other basic information about each private fund advised by the investment adviser. The adviser generally would need to complete a separate section 1b for each private fund it advised. However, because feeder funds typically invest substantially all their assets in a master fund, to prevent duplicative reporting the adviser must report information in section 1b on an aggregated basis for private funds that are part of a master-feeder arrangement and so would not file a separate section 1b for any feeder fund.[112]

Section 1b would require reporting of each private fund's gross and net assets and the aggregate notional value of its derivative positions.[113] It also would require basic information about the fund's borrowings, including a breakdown of the fund's borrowing based on whether the creditor is a U.S. financial institution, foreign financial institution or non-financial institution as well as the identity of, and amount owed to, each creditor to which the fund owed an amount equal to or greater than 5 percent of the fund's net asset value as of the reporting date. This section would require reporting of certain basic information about how concentrated the fund's investor base is, such as the number of beneficial owners of the fund's equity and the percentage of the fund's equity held by the five largest equity holders.[114] Finally, section 1b would require monthly and quarterly performance information about each fund.

The information required by section 1b would allow FSOC to monitor certain systemic trends for the broader private fund industry, such as how certain kinds of private funds perform and exhibit correlated performance behavior under different economic and market conditions and whether certain funds are taking significant risks that may have systemic implications.[115] It would allow FSOC to monitor borrowing practices for the broader private fund industry, which may have interconnected impacts on banks (including specific banks) and thus the broader financial system. We believe that collecting both monthly and quarterly performance data also would allow FSOC to monitor the data at sufficient granularity to track trends.

Finally, section 1c would require reporting of certain information only about hedge funds managed by the adviser, such as their investment strategies, percentage of the fund's assets managed using computer-driven trading algorithms, significant trading counterparty exposures (including identity of counterparties),[116] and trading and clearing practices.[117] This information will enable FSOC to

filings and will monitor whether it could do so on this timeframe.

[109] *See* proposed Advisers Act rule 204(b)–1(g).

[110] *See supra* note 24.

[111] Section 1 would require the adviser to indicate the adviser's total "regulatory assets under management," using the same proposed definition of that term as used on proposed amendments to Part 1 of Form ADV, and its net assets under management, which subtracts out any liabilities of the private funds. *See* Implementing Release, *supra* note 9. Form PF, however, would require the adviser to aggregate parallel managed accounts with related private funds in reporting its assets under management (even if the accounts are not "securities portfolios" within the meaning of proposed Instruction 5.b, Instructions to Part 1A of Form ADV), and thus the total and net assets under management figures reported in section 1a of Form PF may differ from what the adviser reports on Form ADV. Proposed question 2 would require the adviser to report what portion of these assets under management are attributable to hedge funds, liquidity funds, private equity funds, real estate funds, securitized asset funds, venture capital funds, other private funds, and funds and accounts other than private funds. *See* section II.B.1 of this Release for a discussion of these different types of funds and their proposed definitions for purposes of Form PF.

[112] *See* proposed Instructions 5 and 6 to Form PF. When providing responses in Form PF with respect to a private fund, the adviser also must include any parallel managed accounts related to the private fund. *Id.*

[113] The form would require the adviser to report the total gross notional value of its funds' derivative positions, except that options would be reported using their delta adjusted notional value. Long and short positions would not be netted. *See* proposed Form PF, instructions to question 11.

[114] *See* proposed question 12 on Form PF.

[115] This information also would be useful for advancing the Commissions' investor protection goals.

[116] Specifically, proposed questions 19 and 20 on Form PF would require the adviser to identify the five trading counterparties to which the fund has the greatest net counterparty credit exposure (measured as a percentage of the fund's net asset value) and that have the greatest net counterparty credit exposure to the fund (measured in U.S. dollars).

[117] More specifically, proposed question 21 on Form PF would require estimated breakdowns of percentages of the hedge fund's securities and derivatives traded on a regulated exchange versus over the counter and percentages of the hedge fund's securities, derivatives, and repos cleared by a central clearing counterparty ("CCP") versus bilaterally (or, in the case of repos, that constitute a tri-party repo).

monitor systemic risk that could be transmitted through counterparty exposure, track how different strategies are affected by and correlated with different market stresses, and follow the extent of private fund activities conducted away from regulated exchanges and clearing systems. We have based some of this information, such as information about significant trading counterparty exposures and trading and clearing practices, on the FSA surveys, which would promote international consistency in hedge fund reporting.[118]

We request comment on section 1 of proposed Form PF. Is there additional basic information that we should require from all advisers filing Form PF or regarding all of the hedge funds or other private funds that they manage? For example, should we require any of the more detailed information about their borrowing practices that we require regarding large hedge funds in Item B of section 2b? Is a creditor providing 5 percent of the fund's borrowings an appropriate threshold for significant creditors of whose identity FSOC may want to be aware for purposes of assessing the fund's interconnectedness in the financial system? Should the threshold be more or less? Are the top five equity holders in the fund an appropriate threshold for significant investors in the fund? Should the threshold be more or less? Should we require assets under management information for other private fund categories than those specified in question 4? Should we request that performance data be reported on a different basis than monthly and quarterly? Are there other primary investment strategies that hedge funds use that should be included in question 17? Is the information we have proposed requiring on the fund's borrowings necessary given that other questions in section 1b ask for information on the fund's gross and net assets? Will asking for the amount and identity of the five trading counterparties to which the fund has the greatest net counterparty credit exposure and that have the greatest net counterparty credit exposure to the fund appropriately track significant exposures for systemic risk assessment purposes? Have we requested appropriate information on trading and clearing practices sufficient to allow FSOC to examine systemic risks relating to trading and clearing outside of regulated exchanges and central clearing systems? Is there information in section 1 that we should not require, or that we should only require of large hedge fund advisers and why? With respect to the aggregation of master-feeder arrangements for reporting purposes, are there common situations in which an adviser will not have sufficient access to a feeder fund's information to report accurately on Form PF? If so, how should the form address those situations? We also request comment more generally on the definitions of terms we have proposed in the glossary of terms for Form PF.

2. Section 2

Form PF would require private fund advisers who had at least $1 billion in hedge fund assets under management as of the close of business on any day during the reporting period to complete section 2.[119] Section 2a would require certain aggregate information about the hedge funds advised by Large Private Fund Advisers, such as the market value of assets invested (on a short and long basis) in different types of securities and commodities (*e.g.,* different types of equities, fixed income securities, derivatives, and structured products). It also would require the adviser to report the duration of fixed income portfolio holdings (including asset backed securities), to indicate the assets' interest rate sensitivity, as well as the turnover rate of the adviser's aggregate portfolios during the reporting period to provide an indication of the adviser's frequency of trading. Finally, the adviser would be required to report a geographic breakdown of investments held by the hedge funds it advises.

This information would assist FSOC in monitoring asset classes in which hedge funds may be significant investors and trends in hedge funds' exposures to allow FSOC to identify concentrations in particular asset classes (or in particular geographic regions) that are building or transitioning over time. It would aid FSOC in examining large hedge fund advisers' role as a source of liquidity in different asset classes. In some cases, we are proposing that the information be broken down into categories that would facilitate FSOC's use of flow of funds information, which is an important tool for evaluating trends in and risks to the U.S. financial system.[120] This information also is designed to address requirements under section 404 of the Dodd-Frank Act specifying certain mandatory contents for records and reports that must be maintained and filed by advisers to private funds. For example, it would provide information about the types of assets held and trading and investment positions and practices.

Section 2b of Form PF would require large hedge fund advisers to report certain additional information about any hedge fund they advise with a net asset value of at least $500 million as of the close of business on any day during the reporting period (a "qualifying hedge fund").[121] For purposes of determining whether a private fund is a qualifying hedge fund, the adviser would have to aggregate any parallel managed accounts, parallel funds, and funds that are part of the same master-feeder arrangement, and would have to treat any private funds managed by its related person as if they were managed by the filing adviser.[122] We are proposing this aggregation to prevent an adviser from structuring its activities to avoid the reporting requirement. We have selected $500 million as a threshold for more extensive individual hedge fund reporting because we believe that a $500 million hedge fund is a substantial fund the activities of which could have an impact on particular markets in which it invests or on its particular counterparties. We also believe that setting this threshold at this level would minimize reporting burdens on advisers to smaller or start up hedge funds that are less likely to have a systemic impact. Finally, this threshold is the same threshold used by the FSA in its hedge fund surveys and thus would create a certain level of consistency in reported data.

We request comment on the qualifying hedge fund threshold. Should it be lower or higher? If so, why? Should large hedge fund advisers have to report the information for all their hedge funds? Could all of such advisers' hedge funds, in the aggregate, potentially have a systemic impact that would merit such

[118] For example, the FSA survey asks for identification of the hedge fund's top five counterparties in terms of net credit exposure. It also asks for estimates of the percentage of the fund's securities or derivatives traded on a regulated exchange versus over the counter and the percentage of the fund's derivatives and repos cleared by a CCP versus bilaterally.

[119] *See* section II.B of this Release.

[120] For example, we are proposing that in some cases the data be broken down between issuers that are financial institutions and those that are not. The FRB publishes flow of funds data, which is available at *http://www.federalreserve.gov/releases/z1/.*

[121] *See* proposed Instruction 3 to Form PF. Advisers should not complete section 2 with respect to assets managed by a fund of hedge funds. *See* proposed Instruction 7 to Form PF.

[122] *See* proposed Instructions 5 and 6 to Form PF. Parallel funds are a structure in which one or more private funds pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as another private fund. *See* proposed Glossary of Terms to Form PF.

reporting? Should Form PF have different requirements regarding aggregating parallel managed accounts, parallel funds, or feeder funds or aggregating hedge funds managed by affiliates?

Section 2b would require reporting of the same information as that requested in section 2a regarding exposure to different types of assets.[123] In this section, however, this information would be reported separately for each qualifying hedge fund the adviser manages. Section 2b also would require on a per fund basis data not requested in section 2a. The adviser would be required to report information regarding the qualifying hedge fund's portfolio liquidity, concentration of positions, collateral practices with significant counterparties, and the identity of, and clearing relationships with, the three central clearing counterparties to which the fund has the greatest net counterparty credit exposure.[124] This information is designed to assist FSOC in monitoring the composition of hedge fund exposures over time as well as the liquidity of those exposures. The information also would aid FSOC in its monitoring of credit counterparties' unsecured exposure to hedge funds as well as the hedge fund's exposure and ability to respond to market stresses and interconnectedness with central clearing counterparties. Finally, some of this information, such as information about the identity of three central clearing counterparties to which the fund has the greatest net counterparty credit exposure and fund asset liquidity information, was broadly based on information requested by the FSA survey, which would promote international consistency in hedge fund reporting.[125]

Section 2b also would require for each qualifying hedge fund data regarding certain hedge fund risk metrics, financing information, and investor information. If during the reporting period the adviser regularly calculated a value at risk ("VaR") metric for the qualifying hedge fund, the adviser would have to report VaR for each month of the reporting period.[126] The form also would require the adviser to report the impact on the fund's portfolio from specified changes to certain identified market factors, if regularly considered in the fund's risk management, broken down by the long and short components of the qualifying hedge fund's portfolio.[127] This information is designed to allow FSOC to track basic sensitivities of the hedge fund to common market sensitivities, correlations in those factor sensitivities, and trends in those factor sensitivities among large hedge funds.

Item D of Section 2b would require reporting of certain financing information for each qualifying hedge fund, including a monthly breakdown of its secured and unsecured borrowing and its derivatives exposures as well as information about the value of the collateral and letters of credit supporting the secured borrowing and derivatives exposures and the types of creditors. It also would require a breakdown of the term of the fund's committed financing. This information would assist FSOC in monitoring the qualifying hedge fund's leverage, the unsecured exposure of credit counterparties to the fund, and the committed term of that leverage, which may be important to monitor if the fund comes under stress. Collecting financing data broken down on a monthly basis should provide FSOC with sufficient granularity to identify trends.

Finally, Item E of section 2b would require the private fund adviser to report information about each qualifying hedge fund's investor composition and liquidity. For example, it contains questions about the fund's side pocket and gating arrangements and provides for a breakdown of the percentage of the fund's net asset value that is locked in for different periods of time.[128] We believe this information may be important in allowing FSOC to monitor the hedge fund's susceptibility to failure through investor redemptions in the event the fund experiences stress due to market or other factors.

The information in proposed section 2b also is designed to address requirements under section 404 of the Dodd-Frank Act for records and reports that the SEC requires of private fund advisers, such as monitoring the amount of assets under management and the use of leverage, counterparty credit risk exposure, trading and investment positions, and the types of assets held. We request comment on the information that we propose requiring large hedge fund advisers to report under section 2. Is there additional information with respect to the types of their investments, use of leverage, or counterparties that we should require and why? Have we asked for appropriate time period breakdowns of the fund's liquidity in terms of asset liquidity, financing liquidity, and investor liquidity? Is there other information we could ask to assess hedge funds' potential impact on liquidity in particular markets? Would the threshold in the proposed form capture significant central clearing counterparties? Does the proposed form ask sufficient questions regarding the fund's collateral practices to ensure that FSOC will be able to monitor the fund's unsecured exposure to significant counterparties? Should the form require reporting of hedge funds' investment in different types of instruments or commodities than those proposed in questions 23 and 27?

Are there risk metrics or additional market factors that we should require? Should we require the proposed market factors but with different specified changes? Stress testing is an important metric for FSOC's assessment of potential systemic risk posed by hedge funds, but we understand that the type of stress testing conducted varies

[123] *See* proposed question 26 on Form PF.

[124] *See* proposed questions 27–34 on Form PF. For example, question 28 would require reporting of the percentage of the fund's portfolio capable of being liquidated within different time periods. Question 31 would require reporting, for each position that represents 5% or more of the fund's net asset value, of the position's portion of the fund's net asset value and sub-asset class. Questions 32 and 33 would require reporting of initial and variation margin for collateral securing exposure to the fund's top five counterparty groups as well as the face amount of letters of credit posted and certain information on rehypothecation of such collateral.

[125] For example, the FSA survey asks for the percentage of the hedge fund's portfolio that can be liquidated within different time periods and the identity of the fund's top three CCPs in terms of net credit exposure.

[126] If VaR was calculated, the adviser would have to report the confidence interval, time horizon, whether any weighting was used, and the method used to calculate VaR (historical simulation, Monte Carlo simulation, parametric, or other). If applicable, the adviser would have to report the historical lookback period used. The adviser would also have to report if it did not regularly calculate VaR. *See* proposed question 35 on Form PF.

[127] The market factors are changes in: equity prices, risk free interest rates, credit spreads, currency rates, commodity prices, option implied volatilities, ABS default rates, and corporate bond default rates. Advisers are permitted to omit a response with respect to any market factor that it did not regularly consider in the reporting fund's risk management. However, to be "regularly considered" in the fund's risk management does not require that the adviser have conducted stress testing on that market factor (it could simply mean, for example, that the fund's risk managers recognized that such a market factor could have an impact on the fund's portfolio). *See* proposed question 36 on Form PF and related instructions.

[128] A side pocket is a type of account used by private funds to separate illiquid assets from other more liquid fund investments. Only investors in the hedge fund at the time the asset is put in the side pocket (and not future investors) will be entitled to a share of proceeds from that investment. A gate is a restriction imposed by the manager of a private fund on permissible redemptions from the fund during a certain period of time. The standards for imposing suspensions and gates may vary among funds, so in responding to these questions, an adviser would be expected to make a good faith determination as to which provisions of the reporting fund's governing documents would likely be triggered during conditions that it views as significant market stress.

substantially depending on the strategy of the particular hedge fund and among hedge funds pursuing the same strategy. Is there a better way for the form to assess the effects of stresses on hedge funds than the stress testing questions included in the proposed form? Should we request the geographic breakdown of the hedge fund's investments for different geographic regions or countries? Are there existing collections of data broken down by geographic regions or countries with which we should be consistent? Should we require more or less detailed information regarding the types of assets in which the fund invests?

Is there information that we should not require and why? Is there information that we should require large hedge fund advisers to report regarding all of the hedge funds they manage that we only propose requiring qualifying hedge funds to report? Is there information in proposed Form PF that is unlikely to be reported in a comparable or meaningful fashion such that FSOC would be unable to draw any useful conclusions or insights for purposes of assessing systemic risk? If so, how could changes to the question or instructions to the question improve the utility of the information the form seeks? Are there any disclosure requirements in the SEC's proposed amendments to Form ADV (which will be publicly available) that should instead be reported through Form PF (which will not be publicly available) or vice versa? [129]

We request comment more generally on the information we propose requiring in Form PF with respect to hedge funds and their advisers. Is there additional information that would be helpful to FSOC in monitoring for systemic risk with respect to hedge funds?

We note that certain data in the proposed form, while filed with the Commissions on an annual or quarterly basis, would have to be reported on a monthly basis. In addition to providing more granular data to allow FSOC to better identify trends, this aspect of the proposal is designed to mitigate the ability of an adviser to "window dress," or manipulate certain reported data to mask activities or risks undertaken by the private funds it manages.

Is there information that should be broken down further and reported as of smaller time increments, such as weekly, or as of larger time increments? Is there information that should be reported to show ranges, averages, high points, or low points during the reporting period, rather than as of the last day of the month or quarter? If so what time period should the range or average cover and how should it be calculated? We note that we have considered in other contexts different ways of disclosing information that can fluctuate during a reporting period.[130] Are there approaches in these other contexts that should be used in Form PF? What would be the best method of avoiding "window dressing" in the form and why? Is there information that should not be reported on a monthly basis or, in contrast, information that should be reported on a monthly basis (in each case, when the information is filed with the Commissions quarterly or annually)? Please explain your response.

3. Section 3

Form PF would require private fund advisers advising a liquidity fund and managing at least $1 billion in combined liquidity fund and registered money market fund assets as of the close of business on any day in the reporting period to complete and file the information on section 3.[131] As discussed above, to the extent that liquidity funds function as unregistered substitutes for money market funds or otherwise share certain basic characteristics of money market funds, they may be susceptible to runs and thus have the potential to pose systemic risk.[132]

Section 3 would require that these private fund advisers report certain information for each liquidity fund they manage. The section includes questions on whether the fund uses the amortized cost method of valuation and/or the penny rounding method of pricing in computing its net asset value per share to help determine how the fund might try to maintain a stable net asset value that could make the fund more susceptible to runs.[133] It asks whether the fund as a matter of policy is managed in compliance with certain provisions of rule 2a–7 under the Investment Company Act of 1940, which is the principal rule through which the SEC regulates registered money market funds.[134] This information would assist FSOC in assessing the extent to which the liquidity fund is being managed consistent with restrictions imposed on registered money market funds that might mitigate their likelihood of posing systemic risk.

Section 3 also would require reporting of certain information regarding the liquidity fund's portfolio. For example, it would ask, for each month of the reporting period, for the fund's net asset value, net asset value per share, market-based net asset value per share, weighted average maturity ("WAM"), weighted average life ("WAL"), 7-day gross yield, amount of daily and weekly liquid assets, and amount of assets with a maturity greater than 397 days.[135] It also would require the fund to report the amount of its assets invested in different types of instruments, broken down by the maturity of those instruments, as well as information for each open position of the fund that represents 5 percent or more of the fund's net asset value.[136] This information would assist FSOC in assessing the risks undertaken by liquidity funds, their susceptibility to runs, and how their investments might pose systemic risks either among liquidity funds or through contagion to registered money market funds.

Item C of Section 3 would require reporting of any secured or unsecured borrowing of the liquidity fund, broken down by creditor type and the maturity profile of that borrowing, and of whether the fund has in place a committed liquidity facility. This information would aid FSOC in monitoring leverage practices among

[129] *See* Implementing Release, *supra* note 9, for a discussion of the SEC's proposed amendments to Form ADV.

[130] *See Short-Term Borrowings Disclosure,* Securities Act Release No. 9143 (Sept. 17, 2010), at section II.A [75 Fed. Reg. 59866 (Sept. 28, 2010)].

[131] *See* sections II.A.2 and II.B of this Release for a discussion of this reporting threshold and the definition of liquidity fund. For purposes of the $1 billion threshold, an adviser would have to treat any liquidity funds managed by any of the adviser's related persons as though they were advised by the adviser. *See* proposed Instruction 3 to Form PF. Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the form. Section 3 of the form, which would require more specific reporting regarding liquidity funds, would only be required by the SEC.

[132] *See* section II.A.2 of this Release. The SEC also notes that institutional investors—the principal investors in liquidity funds—were the primary participants in the run on money market funds in September 2008, rather than retail investors. *See* MMF Reform Proposing Release, *supra* note 65.

[133] *See* proposed questions 43 and 44 of Form PF.

[134] *See* proposed question 45 of Form PF. The restrictions in rule 2a–7 are designed to ensure, among other things, that money market funds' investing remains consistent with the objective of maintaining a stable net asset value. Many liquidity funds state in investor offering documents that the fund is managed in compliance with rule 2a–7 even though that rule does not apply to liquidity funds.

[135] *See* proposed question 46 of Form PF. WAM, WAL, daily liquid assets, and weekly liquid assets are to be calculated in accordance with rule 2a–7 under the Investment Company Act. The 7-day gross yield is to be calculated consistent with the methodology required under Form N–MFP, which must be filed by money market funds registered with the SEC. *See* 17 CFR 274.201.

[136] *See* proposed question 47 of Form PF. Proposed question 48 of Form PF would require reporting for each month of the reporting period, for each of the fund's positions representing 5% or more of its net asset value, of the position's portion of the fund's net asset value and sub-asset class.

liquidity funds and their potential to magnify risks undertaken by the fund. Finally, Item D of Section 3 would ask for certain information regarding the concentration of the fund's investor base, gating and redemption policies, and investor liquidity.[137] It also would require reporting of a good faith estimate of the percentage of the fund purchased using securities lending collateral. The SEC believes this information would be important in allowing FSOC to monitor the susceptibility of the liquidity fund to a run in the event the fund comes under stress and its interconnectedness to securities lending programs.

The SEC requests comment on the information that it proposes requiring in section 3. Is there additional information that the SEC should require? For example, is there information that the SEC requires to be reported for registered money market funds on Form N–MFP that the SEC also should require to be reported on Form PF for liquidity funds? Should the SEC require reporting of more specific information about the holdings or types of holdings of these liquidity funds? Is the threshold for when the private fund adviser is required to report information in section 3 for an individual liquidity fund appropriate for purposes of FSOC to be able to monitor for potential systemic risk in this sector? Is five percent an appropriate threshold for considering a liquidity fund investment or investor to be significant for purposes of Form PF reporting? Is our proposed breakdown of the liquidity fund's asset maturity and investor liquidity appropriate?

4. Section 4

The SEC is proposing that section 4 of Form PF require private fund advisers managing at least $1 billion in private equity fund assets as of the close of business on the last day of the reporting period to report certain information about each private equity fund they manage.[138] Section 4 would require reporting of certain information about the fund's borrowings and guarantees and the leverage of the portfolio companies in which the fund invests. Specifically, section 4 would require information about the outstanding balance of the fund's borrowings and guarantees.[139] It also would require the adviser to report the weighted average debt-to-equity ratio of controlled portfolio companies in which the fund invests and the range of that debt to equity ratio among these portfolio companies.[140] It asks for the maturity profile of its portfolio companies' debt, for the portion of that debt that is payment-in-kind or zero coupon, and whether the fund or any of its portfolio companies experienced an event of default on any of its debt during the reporting period.[141] It also asks for the identity of the institutions providing bridge financing to the adviser's portfolio companies and the amount of that financing.[142] The SEC believes that this information would allow FSOC to assess to what extent private equity funds use leverage and the potential exposure of banks and other lending providers to the larger private equity funds and their portfolio companies and leverage among portfolio companies of the larger private equity funds to monitor whether trends in those areas could pose systemic implications for the portfolio companies' lenders.

Section 4 also would require reporting of certain information if the fund invests in any financial industry portfolio company, such as its name, its debt-to-equity ratio, and the percentage of the portfolio company beneficially owned by the fund.[143] This information would allow FSOC to monitor large private equity funds' investments in companies that may be particularly important to the stability of the financial system. Section 4 also would ask whether any of the adviser's related persons co-invest in any of the fund's portfolio companies.[144] Finally, the form would require a breakdown of the fund's investments by industry and by geography, which should provide FSOC with basic information about global and industry concentrations that may be relevant to monitoring risk exposures in the financial system.[145]

The SEC requests comment on the information it proposes requiring regarding private equity funds in section 4. Is there additional information that the SEC should request and why? For example, are their additional lending practices used in leveraged buyouts about which the form should collect information? Are there particular industries in which private equity funds might invest that could be systemically important? Should the Form ask additional questions specific to those industries? Should the form track private equity fund investments in different geographic and/or industry concentrations than those we have proposed? Should the SEC request less information and why? Should the SEC not require any reporting on Form PF specific to private equity funds? Why or why not?

E. Filing Fees and Format for Reporting

Under proposed Advisers Act rule 204(b)–1(b), Form PF would need to be filed through an electronic system designated by the SEC for this purpose. There may be efficiencies realized if the current Investment Adviser Registration Depository ("IARD") platform, which is operated by the Financial Industry Regulatory Authority, were expanded for this purpose, such as the possible interconnectivity of Form ADV filings and Form PF filings, and possible ease of filing with one password. The filing system would need to have certain features, including being programmed with special confidentiality protections designed to ensure the heightened confidentiality protections created for Form PF filing information under the Dodd-Frank Act but to allow for secure access by FSOC and other regulators as permitted under the Dodd-Frank Act.

The SEC separately will decide on the system to be selected for the electronic filing of Form PF. That determination will be reflected in a separate notice.

Under the proposed rule, advisers required to file Form PF would be required to pay to the operator of the Form PF filing system fees that have

[137] For example, question 52 would require reporting of the percentage of the reporting fund's equity that is beneficially owned by the beneficial owner having the largest equity interest in the fund and of how many investors beneficially own 5% or more of the fund's equity.

[138] *See* section II.B of this Release for a discussion of this reporting threshold and the definition of "private equity fund." Form PF is a joint form between the SEC and the CFTC only with respect to sections 1 and 2 of the form. Section 4 of the form, which would require more specific reporting regarding private equity funds, would only be required by the SEC.

[139] *See* proposed questions 57 and 58.

[140] *See* proposed questions 59–61. A "controlled portfolio company" is defined as a portfolio company that is controlled by the private equity fund, either alone or together with the private equity fund's related persons or other persons that are part of a club or consortium investing in the portfolio company. "Control" has the same meaning as used in Form ADV, and generally means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. *See* proposed Glossary of Terms to Form PF; Glossary of Terms to Form ADV.

[141] *See* proposed questions 62–64.

[142] *See* proposed question 65.

[143] *See* proposed question 66. A "financial industry portfolio company" generally is defined as a nonbank financial company, as defined by section 102(a)(4) of the Dodd-Frank Act, bank or savings association, bank holding company or financial holding company, savings and loan holding company, credit union, or Farm Credit System institution. *See* proposed Glossary of Terms to Form PF.

[144] *See* proposed question 69.

[145] *See* proposed questions 67 and 68. Industries would be identified using NAICS codes. "NAICS" stands for the "North American Industry Classification System," and is a system of industry classifications commonly used in the financial industry.

been approved by the SEC.[146] We anticipate that Large Private Fund Advisers' filing fees would be set at a higher amount because their filings would be responsible for a larger proportion of system needs due to their more frequent and extensive filings. The SEC in a separate action would approve filing fees that reflect the reasonable costs associated with the filings and the establishment and maintenance of the filing system.[147]

While we are not requiring that the information be filed in eXtensible Markup Language ("XML") tagged data format, we expect to look for a filing system that could accept information filed in XML format. We intend to establish data tags to allow Form PF to be submitted in XML format with the SEC. Accordingly, advisers would be able to file the information in Form PF in XML format if they choose. We believe that certain advisers may prefer to report in XML format because it allows them to automate aspects of their reporting and thus minimize burdens and generate efficiencies for the adviser. We anticipate that we may eventually require Form PF filers to tag data submitted on Form PF using a refined, future taxonomy defined by us, working in collaboration with the industry. Thereafter, the usability of data contained in Form PF is expected to increase greatly because tagged data would be easier to sort and analyze. We note that private initiatives are underway to create such taxonomies.[148] We request comment on our proposed system of electronic filing. Should we require that all filings be done in XML format? Should we allow or require the form to be provided in a format other than XML, such as eXtensible Business Reporting Language ("XBRL")? Is there another format that is more widely used or would be more appropriate for the required data? Should smaller and/or Large Private Fund Advisers be charged different amounts than what we have anticipated charging? If so, why?

III. General Request for Comment

The Commissions request comment on the rules and form proposed in this Release and comment on other matters that might have an effect on the proposals contained in this Release. Commenters should provide empirical data to support their views.

IV. Paperwork Reduction Act

CFTC

Proposed CEA rule 4.27(d) does not impose any additional burden upon registered CPOs and CTAs that are dually registered as investment advisers with the SEC. By filing the Form PF with the SEC, these dual registrants would be deemed to have satisfied certain of their filing obligations with the CFTC, and the CFTC is not imposing any additional burdens herein. Therefore, any burden imposed by Form PF through proposed CEA rule 4.27(d) on entities registered with both the CFTC and the SEC has been accounted for within the SEC's calculations regarding the impact of this collection of information under the Paperwork Reduction Act of 1995 ("PRA").[149]

SEC

Section 404 of the Dodd-Frank Act, which amends section 204(b) of the Advisers Act, directs the SEC to require private fund advisers to file reports containing such information as the SEC deems necessary and appropriate in the public interest and for investor protection or for the assessment of systemic risk. Proposed rule 204(b)–1 and Form PF under the Advisers Act, which would implement this requirement of the Dodd-Frank Act. Proposed Form PF contains a new "collections of information" within the meaning of the PRA.[150] The title for the new collection of information is: "Form PF under the Investment Advisers Act of 1940, reporting by investment advisers to private funds." For purposes of this PRA analysis, the paperwork burden associated with the requirements of proposed rule 204(b)–1 is included in the collection of information burden associated with proposed Form PF and thus does not entail a separate collection of information. The SEC is submitting this collection of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Proposed Form PF is intended to provide FSOC with information that would facilitate fulfillment of its obligations under the Dodd-Frank Act relating to nonbank financial companies and systemic risk monitoring.[151] The SEC also may use the information in connection with its regulatory and examination programs. The respondents to Form PF would be private fund advisers.[152] Compliance with proposed Form PF would be mandatory for any private fund adviser. Smaller private fund advisers would be required to file Form PF only on an annual basis. These smaller private fund advisers would provide a limited amount of basic information about the operations of the private funds they advise.[153] Large Private Fund Advisers would be required to file Form PF on a quarterly basis reporting additional information regarding the private funds they advise. The PRA analysis set forth below takes into account the fact that the additional information proposed Form PF would require that large hedge fund advisers report would be more extensive than the additional information required from large liquidity fund advisers, which in turn would be more extensive than that required from large private equity fund advisers.[154]

As discussed in section II.B of this Release, the SEC has sought to minimize the reporting burden on private fund advisers to the extent appropriate. In particular, the SEC has designed the reporting frequency based on when it understands advisers to private funds are already collecting certain information that Form PF would require. In addition, the SEC has based certain more specific reporting items on information that it understands large hedge fund advisers frequently collect

[146] *See* proposed Advisers Act rule 204(b)–1(d).

[147] *See* section 204(c) of the Advisers Act.

[148] *See, e.g., http://www.operastandards.org.*

[149] 44 U.S.C. 3501–3521.

[150] 44 U.S.C. 3501–3521.

[151] *See* sections I.A and II.A of this Release.

[152] The requirement to file the form would apply to investment advisers registered, or required to register, with the SEC that advise one or more private funds. *See* proposed rule 204(b)–1(a). It would not apply to state-registered investment advisers or exempt reporting advisers.

[153] *See* section II.B of this Release for a description of who would be required to file Form PF, section II.C of this Release for information regarding the frequency with which smaller private fund advisers would be required to file Form PF, and section II.D.1 of this Release for a description of the information that smaller private fund advisers would be required to report on Form PF. *See also* proposed Instruction 8 to Form PF for information regarding the frequency with which smaller private fund advisers would be required to file Form PF.

[154] *See* section II.B of this Release for a description of who would be required to file Form PF, section II.C of this Release for information regarding the frequency with which Large Private Fund Advisers would be required to file Form PF, section II.D.2 of this Release for a description of the information that large hedge fund advisers would be required to report on Form PF, and sections II.D.3 and II.D.4 of this Release for a description of the information that large liquidity and private equity fund advisers would be required to report on Form PF. *See also* proposed Instruction 8 to Form PF for information regarding the frequency with which Large Private Fund Advisers would be required to file Form PF.

for purposes of reporting to investors in the funds.[155]

The information that Form PF would require would be filed through an electronic filing system expected to be operated by an entity designated by the SEC. Responses to the information collections would be kept confidential to the extent permitted by law.[156]

A. Burden Estimates for Annual Reporting by Smaller Private Fund Advisers

In the Implementing Release, the SEC estimated that 3,500 currently registered advisers would become subject to the private fund reporting requirements included in the proposed amendments to Form ADV.[157] The SEC further estimated that 200 advisers to private funds would register with the SEC as a result of normal growth in the population of registered advisers and that 750 advisers to private funds would register as a result of the Dodd-Frank Act's elimination of the private adviser exemption.[158] As a result, the SEC estimates that a total of approximately 4,450 registered investment advisers would become subject to the proposed private fund reporting requirements in Form ADV.[159] Because these advisers would also be required to report on Form PF, the SEC accordingly estimates that approximately 4,450 advisers would be required to file all or part of Form PF.[160] Out of this total number, the SEC estimates that approximately 3,920 would be smaller private fund advisers, not meeting the thresholds for reporting as Large Private Fund Advisers.[161]

Smaller private fund advisers would be required to complete all or portions of section 1 of Form PF and to file on an annual basis. As discussed in greater detail above, section 1 would require basic data regarding the reporting adviser's identity and certain information about the private funds it manages, such as performance, leverage, and investor concentration data.[162] If the reporting adviser advises any hedge funds, section 1 also would require basic information regarding those funds, including their investment strategies, trading counterparty exposures, and trading and clearing practices.

Based on the SEC's experience with other data filings, it estimates that smaller private fund advisers would require an average of approximately 10 burden hours to compile, review and electronically file the required information in section 1 of Form PF for the initial filing and an average of approximately 3 burden hours for subsequent filings.[163] Accordingly, the amortized average annual burden of periodic filings would be 5 hours per smaller private fund adviser for each of the first three years,[164] and the amortized aggregate annual burden of periodic filings for smaller private fund advisers would be 19,600 hours for each of the first three years.[165]

B. Burden Estimates for Quarterly Reporting by Large Private Fund Advisers

The SEC estimates that 530 of the private fund advisers registered with the SEC would meet one or more of the thresholds for reporting as Large Private Fund Advisers.[166] As discussed in section II.D above, Large Private Fund Advisers would be required to report more information on Form PF than smaller private fund advisers and would be required to report on a quarterly basis. The amount of additional information reported by a Large Private Fund Adviser would depend, in part, on whether it is a large hedge fund adviser, a large liquidity fund adviser, or large private equity fund adviser. A large hedge fund adviser would be required to report more information with respect to itself and the funds it advises than would a large liquidity fund adviser, which in turn would report more information than a large private equity fund adviser.[167] Of the total number of Large Private Fund Advisers, the SEC estimates that 200 are large hedge fund advisers, 80 are large liquidity fund advisers, and 250 are large private equity fund advisers.[168]

Because the proposed reporting requirements on Form PF for large hedge fund advisers would be the most extensive of the Large Private Fund Advisers, the SEC estimates that these advisers would require, on average, more hours than other Large Private Fund Advisers to configure systems and to compile, review and electronically file the required information. Accordingly, the SEC estimates that large hedge fund advisers would require an average of approximately 75 burden hours for an initial filing and 35 burden hours for each subsequent filing.[169] In

[155] *See* Report of the Asset Manager's Committee to the President's Working Group on Financial Markets, Best Practices for the Hedge Fund Industry (Jan. 15, 2009), *available at http://www.amaicmte.org/Public/AMC%20Report%20-%20Final.pdf* (discussing best practices on disclosing to investors performance data, assets under management, and risk management practices (including on asset types, geography, leverage, and concentrations of positions) with which we understand many hedge funds comply).

[156] *See supra* note 39 and accompanying text.

[157] *See* section V.B.2.a.ii of the Implementing Release. As proposed in the Implementing Release, advisers to private funds would be required to complete Item 7.B and Section 7.B of Schedule D to the amended Form ADV.

[158] *Id.* The estimates of registered private fund advisers are based in part on the number of advisers that reported a fund in Section 7.B of Schedule D to the current version of Form ADV. Because these responses include funds advised by a related person rather than the adviser, these data may over-estimate the total number of private fund advisers.

[159] 3,500 currently registered advisers to private funds + 200 advisers to private funds registering as a result of normal growth + 750 newly registered advisers to private funds = 4,450 advisers.

[160] If a private fund is advised by both an adviser and one or more subadvisers, only one of these advisers would be required to complete Form PF. *See* section II.B.4 of this Release. As a result, it is likely that some portion of these advisers either would not be required to file Form PF or would be subject to a reporting burden lower than is estimated for purposes of this PRA analysis. The SEC has not attempted to adjust the burden estimates downward for this purpose because the SEC does not currently have reliable data with which to estimate the number of funds that have subadvisers.

[161] Based on the estimated total number of registered private fund advisers that would not meet the thresholds to be considered Large Private Fund Advisers. (4,450 estimated registered private fund advisers − 200 large hedge fund advisers − 80 large liquidity fund advisers − 250 large private equity fund advisers = 3,920 smaller private fund advisers.)

[162] *See supra* section II.D.1.

[163] These estimates reflect the SEC's understanding that much of the information in section 1 of Form PF is currently maintained by most private fund advisers in the ordinary course of business. In addition, the time required to determine a private fund adviser's aggregate assets under management and the amount of assets under management that relate to private funds of various types largely is expected to be included in the approved burden associated with the SEC's Form ADV (this information would only differ if the adviser managed parallel managed accounts). As a result, responding to questions on Form PF that relate to assets under management and determining whether an adviser is a Large Private Fund Adviser should impose little or no additional burden on private fund advisers.

[164] The SEC estimates that a smaller private fund adviser would make 3 annual filings in three years, for an amortized average annual burden of 5 hours (1 initial filing × 10 hours + 2 subsequent filings × 3 hours = 16 hours; and 16 hours ÷ 3 years = approximately 5 hours). After the first three years, filers generally would not incur the start-up burdens applicable to the first filing.

[165] 5 burden hours on average per year × 3,920 smaller private fund advisers = 19,600 burden hours per year.

[166] *See* section II.B.2 of this Release for estimates of the numbers of large hedge fund advisers, large liquidity fund advisers, and large private equity fund advisers. (200 large hedge fund advisers + 80 large liquidity fund advisers + 250 large private equity fund advisers = 530 Large Private Fund Advisers.)

[167] *See supra* sections II.D.2, II.D.3 and II.D.4.

[168] *See supra* section II.B.2.

[169] The estimates of hour burdens and costs for Large Private Fund Advisers provided in the Paperwork Reduction Act and cost benefit analyses are based on burden data provided by advisers in response to the FSA hedge fund survey and on the experience of SEC staff. These estimates also assume that some Large Private Fund Advisers will find it efficient to automate some portion of the reporting process, which would increase the burden of the initial filing but reduce the burden of

Continued

contrast, large liquidity fund advisers, which would report more information than smaller private fund advisers or large private equity fund advisers but less information than large hedge fund advisers, would require an average of approximately 35 burden hours for an initial filing and 16 burden hours for each subsequent filing. Finally, the SEC estimates that large private equity fund advisers, which would report more information than smaller private fund advisers but less than other Large Private Fund Advisers, would require an average of approximately 25 burden hours for an initial filing and 12 burden hours for each subsequent filing. Based on these estimates, the amortized average annual burden of periodic filings would be 153 hours per large hedge fund adviser,[170] 70 hours per large liquidity fund adviser,[171] and 52 hours per large private equity fund adviser, in each case for each of the first three years.[172] In the aggregate, the amortized annual burden of periodic filings would then be 30,600 hours for large hedge fund advisers,[173] 5,600 hours for large liquidity fund advisers,[174] and 13,000 hours for large private equity fund advisers,[175] in each case for each of the first three years.

C. Burden Estimates for Transition Filings, Final Filings and Temporary Hardship Exemption Requests

In addition to periodic filings, a private fund adviser would be required to file very limited information on Form PF in three situations.

First, any adviser that transitions from quarterly to annual filing because it has ceased to be a Large Private Fund Adviser would be required to file a Form PF indicating that it is no longer obligated to report on a quarterly basis. The SEC estimates that approximately 9 percent of Large Private Fund Advisers would need to make a transition filing each year with a burden of 0.25 hours, or a total of 12 burden hours per year for all private fund advisers.[176]

Second, filers who are no longer subject to Form PF's periodic reporting requirements would file a final report indicating that fact. The SEC estimates that approximately 8 percent of the advisers required to file Form PF would have to file such an amendment each year with a burden of 0.25 of an hour, or a total of 89 burden hours per year for all private fund advisers.[177]

Finally, an adviser experiencing technical difficulties in submitting Form PF may request a temporary hardship exemption by filing portions of Form PF in paper format.[178] The information that must be filed is comparable to the information that Form ADV filers provide on Form ADV–H when requesting a temporary hardship exemption relating to that form. In the case of Form ADV–H, the SEC has estimated that the average burden of filing is 1 hour and that approximately 1 in every 1,000 advisers will file annually.[179] Assuming that Form PF filers request hardship exemptions at the same rate and that the applications impose the same burden per filing, the SEC would expect approximately 4 filers to request a temporary hardship exemption each year[180] for a total of 4 burden hours.[181]

D. Aggregate Burden Estimates

Based on the foregoing, the SEC estimates that Form PF would result in an aggregate of 68,905 burden hours per year for all private fund advisers for each of the first three years, or 15 burden hours per year on average for each private fund adviser over the same period.[182]

E. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the SEC solicits comments to: (i) Evaluate whether the proposed amendments to the collection of information are necessary for the proper performance of the functions of the SEC, including whether the information would have practical utility; (ii) evaluate the accuracy of the SEC's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. In particular, would private fund advisers seek to automate all or part of their Form PF reporting obligations? Would automation be efficient only for Large Private Fund Advisers, or would smaller private fund advisers also be able to automate efficiently? What is the likely burden of automation? Would advisers use internal personnel or pay outside service providers to make needed system modifications or to perform all or part of their Form PF reporting obligations? If outside service providers are used, what is the likely cost and how would it impact our estimates of internal costs and hourly burdens for the proposed reporting?

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and also should send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–05–11. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be

subsequent filings, which has been taken into consideration in our burden estimates.

[170] The SEC estimates that a large hedge fund adviser would make 12 quarterly filings in three years, for an amortized average annual burden of 153 hours (1 initial filing × 75 hours + 11 subsequent filings × 35 hours = 460 hours; and 460 hours ÷ 3 years = approximately 153 hours). After the first three years, filers generally would not incur the start-up burdens applicable to the first filing.

[171] The SEC estimates that a large liquidity fund adviser would make 12 quarterly filings in three years, for an amortized average annual burden of 70 hours (1 initial filing × 35 hours + 11 subsequent filings × 16 hours = 211 hours; and 211 hours ÷ 3 years = approximately 70 hours). After the first three years, filers generally would not incur the start-up burdens applicable to the first filing.

[172] The SEC estimates that a large private equity fund adviser would make 12 quarterly filings in three years, for an amortized average annual burden of 52 hours (1 initial filing × 25 hours + 11 subsequent filings × 12 hours = 157 hours; and 157 hours ÷ 3 years = approximately 52 hours). After the first three years, filers generally would not incur the start-up burdens applicable to the first filing.

[173] 153 burden hours on average per year × 200 large hedge fund advisers = 30,600 hours.

[174] 70 burden hours on average per year × 80 large liquidity fund advisers = 5,600 hours.

[175] 52 burden hours on average per year × 250 large private equity fund advisers = 13,000 hours.

[176] Estimate is based on IARD data on the frequency of advisers to one or more private funds ceasing to have assets under management sufficient to cause them to be Large Private Fund Advisers. (530 Large Private Fund Advisers × 0.09 × 0.25 hours = 12 hours.)

[177] Estimate is based on IARD data on the frequency of advisers to one or more private funds withdrawing from SEC registration. (4,450 private fund advisers × 0.08 × 0.25 hours = 89 hours.)

[178] *See* proposed SEC rule 204(b)–1(f). The proposed rule would require that the adviser complete and file Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that the filing is a request for a temporary hardship exemption.

[179] *See* section V.F of the Implementing Release.

[180] 4,450 private fund advisers × 1 request per 1,000 advisers = approximately 4 advisers.

[181] 4 advisers × 1 hour per response = 4 hours.

[182] 19,600 hours for periodic filings by smaller advisers + 30,600 hours for periodic filings by large hedge fund advisers + 5,600 hours for periodic filings by large liquidity fund advisers + 13,000 hours for periodic filings by large private equity fund advisers + 12 hours per year for transition filings + 89 hours per year for final filings + 4 hours per year for temporary hardship requests = approximately 68,905 hours per year. 68,905 hours per year ÷ 4,450 total advisers = 15 hours per year on average.

in writing, refer to File No. S7–05–11, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. CFTC Cost-Benefit Analysis

Section 15(a) of the CEA [183] requires the CFTC to consider the costs and benefits of its actions before issuing rules, regulations, or orders under the CEA. By its terms, section 15(a) does not require the CFTC to quantify the costs and benefits of its rules, regulations or orders or to determine whether the benefits outweigh the costs. Rather, section 15(a) requires that the CFTC "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The CFTC may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding the costs, a particular rule, regulation, or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

The proposed rule 4.27(d) would deem a CPO registered with the CFTC that is dually registered as a private fund adviser with the SEC to have satisfied its filing requirements for Schedules B and C of proposed Form CPO–PQR by completing and filing the applicable portions of Form PF for each of its commodity pools that satisfy the definition of "private fund" in the Dodd-Frank Act. Under the proposed rule, most of the CPOs and CTAs that are dually registered as private fund advisers would be required to provide annually a limited amount of basic information on Form PF about the operations of their private funds. Only large CPOs and CTAs that are also registered as private fund advisers with the SEC would have to submit on a quarterly basis the full complement of systemic risk related information required by Form PF.

As noted above, the Dodd-Frank Act tasks FSOC with monitoring the financial services marketplace in order to identify potential threats to the financial stability of the United States.[184] The Dodd-Frank Act also requires FSOC to collect information from member agencies to support its functions.[185] The CFTC and the SEC are jointly proposing sections 1 and 2 of Form PF as a means to collect the information necessary to permit FSOC to fulfill its obligation to monitor private funds, and in order to identify any potential systemic threats arising from their activities. The CFTC and the SEC do not currently collect the information that is covered in proposed sections 1 and 2 of Form PF.

With respect to costs, the CFTC has determined that: (1) Without the proposed reporting requirements imposed on dually-registered CPOs and CTAs, FSOC will not have sufficient information to identify and address potential threats to the financial stability of the United States (such as the near collapse of Long Term Capital Management); (2) the proposed reporting requirements, once finalized, will provide the CFTC with better information regarding the business operations, creditworthiness, use of leverage, and other material information of certain registered CPOs and CTAs that are also registered as investment advisers with the SEC; and (3) while they are necessary to U.S. financial stability, the proposed reporting requirements will create additional compliance costs for these registrants.

The CFTC has determined that the proposed reporting requirements will provide a benefit to all investors and market participants by providing the CFTC and other policy makers with more complete information about these registrants and the potential risk their activities may pose to the U.S. financial system. In turn, this information would enhance the CFTC's ability to appropriately tailor its regulatory policies to the commodity pool industry and its operators and advisors. As mentioned above, the CFTC and the SEC do not have access to this information today and have instead been made to use information from other, less reliable sources.

The CFTC invites public comment on its cost-benefit considerations as concerns sections 1 and 2 of Form PF. Commenters are also invited to submit any data and other information that they may have quantifying or qualifying the perceived costs and benefits of this proposed rule with their comment letters.

VI. SEC Economic Analysis

As discussed above, the Dodd-Frank Act amended the Advisers Act to, among other things, authorize and direct the SEC to promulgate reporting requirements for private fund advisers. In enacting Sections 404 and 406 of the Dodd-Frank Act, Congress determined to require that private fund advisers file reports with the SEC and specified certain types of information that should be subject to reporting and/or recordkeeping requirements, but Congress left to the SEC the determination of the specific information to be maintained or reported. When determining the form and content of such reports, the SEC may require that private fund advisers file such information "as necessary and appropriate in the public interest and for the protection of investors" or for the assessment of system risk.

The SEC is proposing rule 204(b)–1 and Form PF, to implement the private fund adviser reporting requirements that the Dodd-Frank Act contemplates. Under the proposed rule, private fund advisers would be required to file information responsive to all or portions of Form PF on a periodic basis. The scope of the required information and the frequency of the reporting would be related to the amount of private fund assets that each private fund adviser manages and the type of private fund to which those assets relate. Specifically, smaller private fund advisers would be required to report annually and provide only basic information regarding their operations and the private funds they advise, while Large Private Fund Advisers would report on a quarterly basis and provide more information.[186]

The SEC is sensitive to the costs and benefits imposed by its rules. It has identified certain costs and benefits of proposed Advisers Act rule 204(b)–1 and Form PF, and it requests comment on all aspects of the cost-benefit analysis below, including identification and assessment of any costs and benefits not discussed in this analysis. In

[183] *See* 5 U.S.C. 801(a)(1)(B)(i).

[184] *See* section 112(a)(2)(C) of the Dodd-Frank Act.

[185] *See* section 112(d)(1) of the Dodd-Frank Act.

[186] *See* section II.B of this Release for a description of who would be required to file Form PF, section II.C of this Release for information regarding the frequency with which private fund advisers would be required to file Form PF, and section II.D of this Release for a description of the information that private fund advisers would be required to report on Form PF. *See also* proposed Instruction 8 to Form PF for information regarding the frequency with which private fund advisers would be required to file Form PF.

connection with its consideration of the costs and benefits, the SEC also has considered whether the proposal would promote efficiency, competition, and capital formation. Section 202(c) of the Advisers Act requires the SEC, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[187]

The SEC seeks comment and data on the value of the benefits identified. It also welcomes comments on the accuracy of the cost estimates in this analysis, and requests that commenters provide data that may be relevant to these cost estimates. In addition, the SEC seeks estimates and views regarding these costs and benefits for particular covered advisers, including small advisers, as well as any other costs or benefits that may result from the adoption of the proposed rule and form.

Because proposed Advisers Act rule 204(b)–1 and Form PF would implement sections 404 and 406 of the Dodd-Frank Act, the benefits and costs considered by Congress in passing the Dodd-Frank Act are not entirely separable from the benefits and costs imposed by the SEC in designing the proposed rule and form. Accordingly, although the PRA hourly burden estimates discussed above, and their corresponding dollar cost estimates, are included in full below and in the PRA analysis above, a portion of the reporting costs is attributable to the requirements of the Dodd-Frank Act and not specific requirements of the proposed rule or form.

A. Benefits

The SEC believes Form PF may create two principal classes of benefits. First, the information collected through Form PF is expected to facilitate FSOC's monitoring of the systemic risks that private funds may pose and to assist FSOC in carrying out its other duties under the Dodd-Frank Act with respect to nonbank financial companies. Second, this information may enhance the ability of the SEC to evaluate and form regulatory policies and improve the efficiency and effectiveness of the SEC's monitoring of markets for investor protection and market vitality.

The Dodd-Frank Act directs FSOC to monitor emerging risks to U.S. financial stability[188] and to require FRB supervision of designated nonbank financial companies that may pose risks to U.S. financial stability in the event of their material financial distress or failure or because of their activities.[189] In addition, the Dodd-Frank Act directs FSOC to recommend to the FRB heightened prudential standards for designated nonbank financial companies.[190]

In enacting Sections 404 and 406 of the Dodd-Frank Act, Congress recognized that FSOC would need information from private fund advisers to help it carry out its duties. As a result, proposed Form PF is designed to gather information regarding the private fund industry that would be useful to FSOC in monitoring systemic risk.[191] Systemic risk may arise from a variety of sources, including interconnectedness, changes in market liquidity and market concentrations, and so the information that Form PF elicits is intended to provide data that, individually or in the aggregate, would permit FSOC to identify where systemic risk may arise across a range of sources. The SEC expects that FSOC would use this data to supplement the data that it collects regarding other financial market participants and gain a broader view of the financial system than is currently available to regulators. In this manner, the SEC believes that the information collected through Form PF could play an important role in FSOC's monitoring of systemic risk, both in the private fund industry and in the financial markets more broadly.

The proposed private fund reporting on Form PF would also benefit all investors and market participants by improving the information available to the SEC regarding the private fund industry. Today, regulators have little reliable data regarding this rapidly growing sector and frequently have to rely on data from other sources, which when available may be incomplete. As discussed above, the more reliable data collected through Form PF would assist FSOC in identifying and addressing risks to U.S. financial stability, potentially protecting investors and other market participants from significant losses. In addition, this data would provide the SEC with a more complete view of the financial markets in general and the private fund industry in particular. This broader perspective and more reliable data may enhance its ability to form and frame regulatory policies regarding the private fund industry and its advisers, and to more effectively evaluate the outcomes of regulatory policies and programs directed at this sector, including for the protection of private fund investors.

The SEC also estimates that the proposed rule may improve the efficiency and effectiveness of the SEC's oversight of private fund advisers by enabling SEC staff to manage and analyze information related to the risks posed by private funds more quickly, more effectively, and at a lower cost than is currently possible. This would allow the SEC to more efficiently and effectively target its examination program. The SEC would be able to use Form PF information to generate reports on the industry, its characteristics and trends. These reports may help the SEC anticipate regulatory problems, allocate and reallocate its resources, and more fully evaluate and anticipate the implications of various regulatory actions it may consider taking, which should increase both the efficiency and effectiveness of its programs and thus increase investor protection. Responses to many of the proposed questions would help the SEC better understand the investment activities of private funds and the scope of their potential effect on investors and the markets that the SEC regulates.

The coordination with the CFTC would also result in significant efficiencies for private fund advisers that are also registered as a CPO or CTA with the CFTC because, under the proposed rules in this Release, these advisers would satisfy certain reporting obligations under both proposed Advisers Act rule 204(b)–1 and proposed CEA rule 4.27(d) with respect to commodity pools that satisfy the definition of "private fund" (as proposed in Form PF) by filing Form PF. As discussed in section I.B of this Release, the SEC also has coordinated with foreign financial regulators regarding the reporting of systemic risk information regarding hedge funds and anticipates that this coordination, as reflected in proposed Form PF, would result in greater efficiencies in reporting by private fund advisers, as well as information sharing and private fund monitoring among foreign financial regulators.

As discussed in section II.B of this Release, the SEC has designed the reporting frequency in proposed Form PF based on when it understands advisers to private funds are already compiling certain information that Form PF would require, creating efficiencies for, and benefiting, the adviser in satisfying its reporting obligations. The SEC also has based certain more specific

[187] 15 U.S.C. 80b–2(c).

[188] *See supra* note 6 and accompanying text.

[189] Section 112(a)(2) of the Dodd-Frank Act.

[190] *See supra* note 7 and accompanying text.

[191] *See* section II.D of this Release for a description of the information that private fund advisers would be required to report on proposed Form PF.

reporting items on information that it understands large hedge fund advisers frequently calculate for purposes of reporting to investors in the funds.[192]

The SEC does not expect that this proposal would have an effect on competition because the information generally would be non-public and similar types of advisers would have comparable burdens under the form. The SEC also does not expect that this proposal would have an effect on capital formation because the information generally would be non-public and thus should not impact private fund advisers' ability to raise capital or their market activities.

B. Costs

The proposed reporting requirement also would impose certain costs on private fund advisers. In order to minimize these costs, the scope of the required information and the frequency of the reporting generally would be less for private fund advisers that manage less private fund assets or that do not manage types of private funds that may be more likely to pose systemic risk. Specifically, smaller private fund advisers would be required to report annually and provide only basic information regarding their operations and the private funds they advise, while Large Private Fund Advisers would report on a quarterly basis and provide more information.[193] Further, the additional information required from large hedge fund advisers would be more extensive than the additional information required from large liquidity fund advisers, which in turn would be more extensive than that required from large private equity fund advisers.

The SEC expects that the costs of reporting would be most significant for the first report that a private fund adviser is required to file because the adviser would need to familiarize itself with the new reporting form and may need to configure its systems in order to efficiently gather the required information. The SEC also anticipates that the initial report would require more attention from senior personnel, including compliance managers and senior risk management specialists, than would subsequent reports. In addition, the SEC expects that some Large Private Fund Advisers would find it efficient to automate some portion of the reporting process, which would increase the burden of the initial filing but reduce the burden of subsequent filings.

In subsequent reporting periods, the SEC anticipates that filers would incur significantly lower costs because much of the work involved in the initial report is non-recurring and because of efficiencies realized from system configuration and reporting automation efforts accounted for in the initial reporting period. In addition, the SEC estimates that senior personnel would bear less of the reporting burden in subsequent reporting periods, reducing costs though not necessarily reducing the burden hours.

Based on the foregoing, the SEC estimates[194] that, for the purposes of the PRA, the periodic filing requirements under Form PF (including configuring systems and compiling, automating, reviewing and electronically filing the report) would impose:

(1) 10 burden hours at a cost of $3,410[195] per smaller private fund adviser for the initial annual report;

(2) 3 burden hours at a cost of $830[196] per smaller private fund adviser for each subsequent annual report;

(3) 75 burden hours at a cost of $23,270[197] per large hedge fund adviser for the initial quarterly report;

(4) 35 burden hours at a cost of $9,700[198] per large hedge fund adviser for each subsequent quarterly report;

(5) 35 burden hours at a cost of $10,860[199] per large liquidity fund adviser for the initial quarterly report;

(6) 16 burden hours at a cost of $4,440[200] per large liquidity fund adviser for each subsequent quarterly report;

(7) 25 burden hours at a cost of $7,760[201] per large private equity fund

[192] *See* note 105 and accompanying text.

[193] *See* section II.B of this Release for a description of who would be required to file Form PF, section II.C of this Release for information regarding the frequency with which private fund advisers would be required to file Form PF, and section II.D of this Release for a description of the information that private fund advisers would be required to report on Form PF. *See also* proposed Instruction 8 to Form PF for information regarding the frequency with which private fund advisers would be required to file Form PF.

[194] The SEC understands that some advisers may outsource all or a portion of their Form PF reporting responsibilities to a filing agent, software consultant, or other third-party service provider. The SEC believes, however, that an adviser would engage third-party service providers only if the external costs were comparable, or less than, the estimated internal costs of compiling, reviewing, and filing the Form PF. The hourly wage data used in this Economic Analysis section of the Release is based on the Securities Industry and Financial Markets Association's *Report on Management & Professional Earnings in the Securities Industry 2010.* This data has been modified to account for an 1,800-hour work-year and multiplied by 5.35 for management and professional employees and by 2.93 for general and compliance clerks to account for bonuses, firm size, employee benefits and overhead.

[195] The SEC expects that for the initial report these activities will most likely be performed equally by a compliance manager at a cost of $273 per hour and a senior risk management specialist at a cost of $409 per hour and that, because of the limited scope of information required from smaller private fund advisers, these advisers generally would not realize significant benefits from or incur significant costs for system configuration or automation. ($273/hour × 0.5 + $409/hour × 0.5) × 10 hours = approximately $3,410.

[196] The SEC expects that for subsequent reports senior personnel will bear less of the reporting burden. As a result, the SEC estimates that these activities will most likely be performed equally by a compliance manager at a cost of $273 per hour, a senior compliance examiner at a cost of $235 per hour, a senior risk management specialist at a cost of $409 per hour and a risk management specialist at a cost of $192 per hour. ($273/hour × 0.25 + $235/hour × 0.25 + $409/hour × 0.25 + $192/hour × 0.25) × 3 hours = approximately $830.

[197] The SEC expects that for the initial report, of a total estimated burden of 75 hours, approximately 45 hours will most likely be performed by compliance professionals and 30 hours will most likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, the SEC anticipates that it will be performed equally by a compliance manager at a cost of $273 per hour and a senior risk management specialist at a cost of $409 per hour. Of the work performed by programmers, the SEC anticipates that it will be performed equally by a senior programmer at a cost of $304 per hour and a programmer analyst at a cost of $224 per hour. ($273/hour × 0.5 + $409/hour × 0.5) × 45 hours + ($304/hour × 0.5 + $224/hour × 0.5) × 30 hours = approximately $23,270.

[198] The SEC expects that for subsequent reports senior personnel will bear less of the reporting burden and that significant system configuration and reporting automation costs will not be incurred. As a result, the SEC estimates that these activities will most likely be performed equally by a compliance manager at a cost of $273 per hour, a senior compliance examiner at a cost of $235 per hour, a senior risk management specialist at a cost of $409 per hour and a risk management specialist at a cost of $192 per hour. ($273/hour × 0.25 + $235/hour × 0.25 + $409/hour × 0.25 + $192/hour × 0.25) × 35 hours = approximately $9,700.

[199] The SEC expects that for the initial report, of a total estimated burden of 35 hours, approximately 21 hours will most likely be performed by compliance professionals and 14 hours will most likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, the SEC anticipates that it will be performed equally by a compliance manager at a cost of $273 per hour and a senior risk management specialist at a cost of $409 per hour. Of the work performed by programmers, the SEC anticipates that it will be performed equally by a senior programmer at a cost of $304 per hour and a programmer analyst at a cost of $224 per hour. ($273/hour × 0.5 + $409/hour × 0.5) × 21 hours + ($304/hour × 0.5 + $224/hour × 0.5) × 14 hours = approximately $10,860.

[200] The SEC expects that for subsequent reports senior personnel will bear less of the reporting burden and that significant system configuration and reporting automation costs will not be incurred. As a result, the SEC estimates that these activities will most likely be performed equally by a compliance manager at a cost of $273 per hour, a senior compliance examiner at a cost of $235 per hour, a senior risk management specialist at a cost of $409 per hour and a risk management specialist at a cost of $192 per hour. ($273/hour × 0.25 + $235/hour × 0.25 + $409/hour × 0.25 + $192/hour × 0.25) × 16 hours = approximately $4,440.

[201] The SEC expects that for the initial report, of a total estimated burden of 25 hours, approximately 15 hours will most likely be performed by compliance professionals and 10 hours will most

Continued

adviser for the initial quarterly report; and

(8) 12 burden hours at a cost of $3,330 [202] per large private equity fund adviser for each subsequent quarterly report.

Assuming that there are 3,920 smaller private fund advisers, 200 large hedge fund advisers, 80 large liquidity fund advisers, and 250 large private equity fund advisers, the foregoing estimates would suggest an annual cost of $30,200,000 [203] for all private fund advisers in the first year of reporting and an annual cost of $15,800,000 in subsequent years.[204]

In addition, as discussed above, a private fund adviser would be required to file very limited information on Form PF if it needed to transition from quarterly to annual filing, if it were no longer subject to the reporting requirements of Form PF or if it required a temporary hardship exemption under proposed rule 204(b)–1(f). The SEC estimates that transition and final filings would, collectively, cost private fund advisers as a whole approximately $6,770 per year.[205] The SEC further estimates that hardship exemption requests would cost private fund advisers as a whole approximately $760 per year.[206]

Finally, firms required to file Form PF would have to pay filing fees. The amount of these fees has not yet been determined.[207]

C. Request for Comment

The SEC requests comments on all aspects of the foregoing cost-benefit analysis, including the accuracy of the potential costs and benefits identified and assessed in this Release, as well as any other costs or benefits that may result from the proposals. The SEC encourages commenters to identify, discuss, analyze, and supply relevant data regarding these or additional costs and benefits. The SEC also requests comment on the foregoing analysis of the likely effect of the proposed rule on competition, efficiency, and capital formation. Commenters are requested to provide empirical data to support their views.

In addition, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA," [208] the SEC must advise OMB whether a proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results in or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment, or innovation.

We request comment on the potential impact of the proposed new rule and proposed rule amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Initial Regulatory Flexibility Analysis

CFTC

Under proposed rule 4.27(d), the CFTC would not impose any additional burden upon registered CPOs and CTAs that are dually registered as investment advisers with the SEC because such entities are only required to file Form PF with the SEC. Further, certain CPOs registered with the CFTC that are also registered with the SEC would be deemed to have satisfied certain CFTC-related filing requirements by completing and filing the applicable sections of Form PF with the SEC. Therefore, any burden imposed by Form PF through proposed rule 4.27(d) on small entities registered with both the CFTC and the SEC has been accounted for within the SEC's initial calculations regarding the impact of this collection of information under the Regulatory Flexibility Act ("RFA").[209] Accordingly, the Chairman, on behalf of the CFTC, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant impact on a substantial number of small entities.

SEC

The SEC has prepared the following Initial Regulatory Flexibility Analysis ("IRFA") regarding proposed Advisers Act rule 204(b)–1 in accordance with section 3(a) of the RFA.

A. Reasons for Proposed Action

The SEC is proposing rule 204(b)–1 and Form PF specifying information that private fund advisers must disclose confidentially to the SEC, which information the SEC will share with FSOC for systemic risk assessment purposes to help implement sections 404 and 406 of the Dodd-Frank Act. Under the proposed rule, private fund advisers would be required to file information responsive to all or portions of Form PF on a periodic basis. The scope of the required information and the frequency of the reporting would be related to the amount of private fund assets that each private fund adviser manages and the type of private fund to which those assets relate. Specifically, smaller private fund advisers would be required to report annually and provide only basic information regarding their operations and the private funds they advise, while Large Private Fund

likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, the SEC anticipates that it will be performed equally by a compliance manager at a cost of $273 per hour and a senior risk management specialist at a cost of $409 per hour. Of the work performed by programmers, the SEC anticipates that it will be performed equally by a senior programmer at a cost of $304 per hour and a programmer analyst at a cost of $224 per hour. ($273/hour × 0.5 + $409/hour × 0.5) × 15 hours + ($304/hour × 0.5 + $224/hour × 0.5) × 10 hours = approximately $7,760.

[202] The SEC expects that for subsequent reports senior personnel will bear less of the reporting burden and that significant system configuration and reporting automation costs will not be incurred. As a result, the SEC estimates that these activities will most likely be performed equally by a compliance manager at a cost of $273 per hour, a senior compliance examiner at a cost of $235 per hour, a senior risk management specialist at a cost of $409 per hour and a risk management specialist at a cost of $192 per hour. ($273/hour × 0.25 + $235/hour × 0.25 + $409/hour × 0.25 + $192/hour × 0.25) × 12 hours = approximately $3,330.

[203] (3,920 smaller private fund advisers × $3,410 per initial annual report) + (200 large hedge fund advisers × $23,270 per initial quarterly report) + (200 large hedge fund advisers × 3 quarterly reports × $9,700 per subsequent quarterly report) + (80 large liquidity fund advisers × $10,860 per initial quarterly report) + (80 large liquidity fund advisers × 3 quarterly reports × $4,440 per subsequent quarterly report) + (250 large private equity fund advisers × $7,760 per initial quarterly report) + (250 large private equity fund advisers × 3 quarterly reports × $3,330 per subsequent quarterly report) = approximately $30,200,000.

[204] (3,920 smaller private fund advisers × $830 per subsequent annual report) + (200 large hedge fund advisers × 4 quarterly reports × $9,700 per subsequent quarterly report) + (80 large liquidity fund advisers × 4 quarterly reports × $4,440 per subsequent quarterly report) + (250 large private equity fund advisers × 4 quarterly reports × $3,330 per subsequent quarterly report) = approximately $15,800,000.

[205] The SEC estimates that, for the purposes of the PRA, transition filings will impose 12 burden hours per year on private fund advisers in the aggregate and that final filings will impose 89 burden hours per year on private fund advisers in the aggregate. The SEC anticipates that this work will most likely be performed by a compliance clerk at a cost of $67 per hour. (12 burden hours + 89 burden hours) × $67/hour = approximately $6,770.

[206] The SEC estimates that, for the purposes of the PRA, requests for temporary hardship exemptions will impose 4 burden hours per year on private fund advisers in the aggregate. The SEC anticipants that five-eighths of this work will most likely be performed by a compliance manager at a cost of $273 per hour and that three-eighths of this work will most likely be performed by a general clerk at a cost of $50 per hour. (($273 per hour × ⅝ of an hour) + ($50 per hour × ⅜ of an hour)) × 4 hours = approximately $760.

[207] *See supra* note 147 and accompanying text.

[208] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[209] 5 U.S.C. 603(a).

Advisers would report on a quarterly basis and provide more information.[210]

B. Objectives and Legal Basis

As described more fully in sections I and II of this Release, the general objective of proposed Advisers Act rule 204(b)–1 is to assist FSOC in its obligations under the Dodd-Frank Act relating to nonbank financial companies and in monitoring systemic risk. The SEC is proposing rule 204(b)–1 and Form PF pursuant to the SEC's authority set forth in sections 404 and 406 of the Dodd-Frank Act, to be codified at sections 204(b) and 211(e) of the Advisers Act [15 U.S.C. 80b–4(b) and 80b–11(e)].

C. Small Entities Subject to the Rule

Under SEC rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[211]

Under section 203A of the Advisers Act, most advisers qualifying as small entities are prohibited from registering with the SEC and are instead registered with State regulators. Therefore, few small advisers would be subject to the proposed rule and form. The SEC estimates that as of December 1, 2010, approximately 50 advisers that were small entities were registered with the SEC and advised one or more private funds.[212]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule and form would impose certain reporting and compliance requirements on advisers, including small advisers. The proposed rule would require all small advisers registered with the SEC and that advise one or more private funds to file Form PF, completing all or part of section 1 of that form. As discussed above, the SEC estimates that completing, reviewing, and filing Form PF would cost $3,410 per year for each small adviser in its first year of reporting and $830 per year for each subsequent year.[213] In addition, small entities would be required to pay a filing fee when submitting Form PF. The amount of the filing fee has not yet been determined, but we anticipate that Large Private Fund Advisers' filing fees would be set at a higher amount than small advisers.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The SEC has not identified any Federal rules that duplicate or overlap or conflict with the proposed rule.

F. Significant Alternatives

The Regulatory Flexibility Act directs the SEC to consider significant alternatives that would accomplish the stated objective, while minimizing any significant impact on small entities. In connection with the proposed rules and amendments, the SEC considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

Regarding the first and fourth alternatives, the SEC has proposed different reporting requirements and timetables for small entities. The proposed rule only would require small entity advisers to file Form PF annually and to complete applicable portions of section 1 of the form.[214] These smaller advisers also would have to pay a smaller amount of filing fees than Large Private Fund Advisers. Regarding the second alternative, the information that would be required of small entities under section 1 of Form PF is quite simplified from the more extensive reporting that would be required of Large Private Fund Advisers and is consolidated in one section of the form.

G. Solicitation of Comments

The SEC encourages written comments on matters discussed in this IRFA. In particular, the SEC seeks comment on:

- The number of small entities that would be subject to the proposed rule; and
- Whether the effect of the proposed rule on small entities would be economically significant.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect.

VIII. Statutory Authority

CFTC

The CFTC is proposing rule 4.27(d) [17 CFR 4.27(d)] pursuant to its authority set forth in section 4n of the Commodity Exchange Act [7 U.S.C. 6n].

SEC

The SEC is proposing rule 204(b)–1 [17 CFR 275.204(b)–1] pursuant to its authority set forth in sections 404 and 406 of the Dodd-Frank Act, to be codified at sections 204(b) and 211(e) of the Advisers Act [15 U.S.C. 80b–4 and 15 U.S.C. 80b–11], respectively.

The SEC is proposing rule 279.9 pursuant to its authority set forth in sections 404 and 406 of the Dodd-Frank Act, to be codified at sections 204(b) and 211(e) of the Advisers Act [15 U.S.C. 80b–4 and 15 U.S.C. 80b–11], respectively.

List of Subjects

17 CFR Part 4

Advertising, Brokers, Commodity Futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

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[210] *See* section II.B of this Release for a description of who would be required to file Form PF, section II.C of this Release for information regarding the frequency with which private fund advisers would be required to file Form PF, and section II.D of this Release for a description of the information that private fund advisers would be required to report on Form PF. *See also* proposed Instruction 8 to Form PF for information regarding the frequency with which private fund advisers would be required to file Form PF.

[211] 17 CFR 275.0–7(a).

[212] Based on IARD data.

[213] *See supra* notes 195–196 and accompanying text.

[214] If the adviser had no hedge fund assets under management, it would not need to complete section 1.C of the proposed form. Advisers that manage both registered money market funds and liquidity funds would be required to complete section 3 of Form PF, but there are no small entities that manage a registered money market fund. *See* section II.B of this Release for a description of who would be required to file Form PF, section II.C of this Release for information regarding the frequency with which smaller private fund advisers would be required to file Form PF, and section II.D.1 of this Release for a description of the information that smaller private fund advisers would be required to report on Form PF. *See also* proposed Instruction 8 to Form PF for information regarding the frequency with which smaller private fund advisers would be required to file Form PF.

Text of Proposed Rules

Commodity Futures Trading Commission

For the reasons set out in the preamble, the CFTC is proposing to amend Title 17, Chapter I of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

* * * * *

2. In § 4.27, as proposed to be added elsewhere in this issue of the **Federal Register**, add paragraph (d) to read as follows:

§ 4.27 Additional reporting by advisors of commodity pools.

* * * * *

(d) Investment advisers to private funds. CPOs and CTAs who are dually registered with the Securities and Exchange Commission and advise one or more private funds, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)), shall file Form PF with the Securities and Exchange Commission. Dually registered CPOs and CTAs that file Form PF with the Securities and Exchange Commission will be deemed to have filed Form PF with the Commission for purposes of any enforcement action regarding any false or misleading statement of a material fact in Form PF. Dually registered CPOs and CTAs must file such other reports as are required under this section with respect to all pools that are not private funds.

* * * * *

Securities and Exchange Commission

For the reasons set out in the preamble, the SEC is proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

4. Section 275.204(b)–1 is added to read as follows:

§ 275.204(b)–1 Reporting by investment advisers to private funds.

(a) *Reporting by investment advisers to private funds on Form PF.* Subject to paragraph (g), if you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) and act as an investment adviser to one or more private funds, you must complete and file a report on Form PF (17 CFR 279.9) within 15 days of the end of the next calendar quarter by following the instructions in the Form, which specify the information that an investment adviser must provide.

(b) *Electronic filing.* You must file Form PF electronically with the Form PF filing system.

Note to paragraph (b): Information on how to file Form PF is available on the Commission's Web site at *http://www.sec.gov/[__].*

(c) *When filed.* Each Form PF is considered filed with the Commission upon acceptance by the Form PF filing system.

(d) *Filing fees.* You must pay the operator of the Form PF filing system a filing fee as required by the instructions to Form PF. The Commission has approved the amount of the filing fee. No portion of the filing fee is refundable. Your completed Form PF will not be accepted by the operator of the Form PF filing system, and thus will not be considered filed with the Commission, until you have paid the filing fee.

(e) *Amendments to Form PF.* You must amend your Form PF:

(1) At least annually, no later than the last day on which you may timely file your annual amendment to Form ADV under rule 204–1(a)(1) (17 CFR 275.204–1(a)(1)); and

(2) More frequently, if required by the instructions to Form PF. You must file all amendments to Form PF electronically with the Form PF filing system.

(f) *Temporary hardship exemption.* (1) If you have unanticipated technical difficulties that prevent you from submitting Form PF on a timely basis through the Form PF filing system, you may request a temporary hardship exemption from the requirements of this section to file electronically.

(2) To request a temporary hardship exemption, you must:

(i) Complete and file with the operator of the Form PF filing system in paper format Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that you are requesting a temporary hardship exemption, no later than one business day after the electronic Form PF filing was due; and

(ii) Submit the filing that is the subject of the Form PF paper filing in electronic format with the Form PF filing system no later than seven business days after the filing was due.

(3) The temporary hardship exemption will be granted when you file Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that you are requesting a temporary hardship exemption.

(g) *Transition for certain filers.* If you were an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), act as an investment adviser to one or more private funds immediately prior to the compliance date of rule 204(b)–1, and are only required to complete all or portions of section 1 of Form PF, no later than 90 days after the end of your then-current fiscal year you must complete and file your initial report on Form PF by following the instructions in the Form, which specify the information that an investment adviser must provide.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

5. The authority citation for part 279 continues to read as follows:

Authority: 15 U.S.C. 80b–1, *et seq.*

6. Section 279.9 is added to read as follows:

§ 279.9 Form PF, reporting by investment advisers to private funds.

This form shall be filed pursuant to Rule 204(b)–1 (§ 275.204(b)–1 of this chapter) by certain investment advisers registered or required to register under section 203 of the Act (15 U.S.C. 80b–3) that act as an investment adviser to one or more private funds.

Note: The following Form PF will not appear in the Code of Federal Regulations.

FORM PF (Paper Version)

Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors

OMB APPROVAL	
OMB Number:	[ ]
Expires:	[ ]
Estimated average burden hours per response	[ ]

Form PF: General Instructions **Page 1**

Read these instructions carefully before completing Form PF. Failure to follow these instructions, properly complete Form PF, or pay all required fees may result in your Form PF being delayed or rejected.

In these instructions and in Form PF, "you" means the *private fund adviser* completing or amending this Form PF. If you are a "separately identifiable department or division" (SID) of a bank, "you" means the SID rather than the bank (except as provided in Question 1(a)). Terms that appear in *italics* are defined in the Glossary of Terms to Form PF.

1. Who must complete and file a Form PF?

You must complete and file a Form PF, if:

A. You are registered or required to register with the *SEC* as an investment adviser;

OR

You are registered or required to register with the *CFTC* as a *CPO* or *CTA* and you are also registered or required to register with the *SEC* as an investment adviser;

AND

B. You manage one or more *private funds*.

Many *private fund advisers* meeting these criteria will be required to complete only Section 1 of Form PF and will need to file only on an annual basis. *Large private fund advisers*, however, will be required to provide additional data and file every quarter. See Instructions 3 and 8 below.

If your *principal office and place of business* is outside the United States, for purposes of this Form PF you may disregard any *private fund* that during your last fiscal year was neither a *United States person* nor offered to, or beneficially owned by, any *United States person*.

2. I have a *related person* who is required to file Form PF. May I and my *related person* file a single Form PF?

Related persons may (but are not required to) report on a single Form PF information with respect to all such *related persons* and the *private funds* they advise. You must identify in your response to Question 1 the *related persons* as to which you are reporting and, where information is requested about you or the *private funds* you advise, respond as though you and such *related persons* were one firm.

3. How is Form PF organized?

Section 1 – All Form PF filers

Section 1a All *private fund advisers* required to file Form PF must complete Section 1a. Section 1a asks general identifying information about you and the types of *private*

funds you advise.

Section 1b — All *private fund advisers* required to file Form PF must complete Section 1b. Section 1b asks for certain information regarding the *private funds* that you advise.

Section 1c — All *private fund advisers* that are required to file Form PF and advise one or more *hedge funds* must complete Section 1c. Section 1c asks for certain information regarding the *hedge funds* that you advise.

Section 2 – *Large private fund advisers* advising *hedge funds*

Section 2a — You are required to complete Section 2a if you and your *related persons*, collectively, had at least $1 billion in *hedge fund assets under management* as of the close of business on any day during the most recently completed calendar quarter.

Subject to Instruction 4, Section 2a requires information to be reported on an aggregate basis for all *hedge funds* that you advise.

Section 2b — If you are required to complete Section 2a, you must complete a separate Section 2b with respect to each *qualifying hedge fund* that you advise.

However:

for any *parallel fund structures* that collectively comprise a *qualifying hedge fund*, you must complete a separate Section 2b for each *parallel fund* that is part of that *parallel fund structure* (even if that *parallel fund* is not itself a *qualifying hedge fund*); and

if you report answers on an aggregated basis for any *master-feeder arrangement* in accordance with Instruction 5, you should only complete a separate Section 2b with respect to the *reporting fund* for such *master-feeder arrangement*.

Section 3 – *Large private fund advisers* advising *liquidity funds*

Section 3 — You are required to complete Section 3 if (i) you advise one or more *liquidity funds* and (ii) as of the close of business on any day during the most recently completed calendar quarter, you and your *related persons*, collectively, had at least $1 billion in *combined money market and liquidity fund assets under management*.

You must complete a separate Section 3 with respect to each *liquidity fund* that you advise.

However, if you report answers on an aggregated basis for any *master-feeder arrangement* in accordance with Instruction 5, you should only complete a separate Section 3 with respect to the *reporting fund* for such *master-feeder arrangement*.

Section 4 – *Large private fund advisers* advising *private equity funds*

Section 4 You are required to complete Section 4 if you and your *related persons*, collectively, had at least $1 billion in *private equity fund assets under management* as of the close of business on the last day of the most recently completed calendar quarter.

You must complete a separate Section 4 with respect to each *private equity fund* that you advise.

However, if you report answers on an aggregated basis for any *master-feeder arrangement* in accordance with Instruction 5, you should only complete a separate Section 4 with respect to the *reporting fund* for such *master-feeder arrangement*.

Section 5 – Advisers requesting a temporary hardship exemption

Section 5 See Instruction 13 for details.

4. I am a subadviser or engage a subadviser for a *private fund*. Who is responsible for reporting information about that *private fund*?

Only one *private fund adviser* should complete and file Form PF for each *private fund*. If an adviser files *Form ADV Section 7.B.1* with respect to any *private fund*, the same adviser must also complete and file Form PF for that *private fund*.

Where a question requests aggregate information regarding the *private funds* that you advise, you should only include information regarding the *private funds* for which you are filing Section 1b of Form PF.

5. When am I required to aggregate information regarding *parallel funds*, *parallel managed accounts*, *master-feeder arrangements* and funds managed by *related persons*?

You are required to aggregate related funds and accounts differently depending on the purpose of the aggregation.

For purposes of determining whether you meet a reporting threshold, you must aggregate *parallel funds*, *parallel managed accounts* and master-feeder funds. In addition, you must treat any *private fund* or *parallel managed account* advised by any of your *related persons* as though it were advised by you.

In contrast, for questions that request information about individual funds, you must report aggregate information for *parallel managed accounts* and master-feeder funds, but not *parallel funds*. Where a question requests aggregate information regarding the *private funds* that you advise, you should only include information regarding the *private funds* for which you are filing Section 1b of Form PF. You should not report information for any *private fund* or *parallel managed account* advised by any of your *related persons* unless you have identified that *related person* in Question 1(b) as a *related person* for which you are filing Form PF.

See the table below for more detailed instructions.

For purposes of determining whether a *private fund* is a *qualifying hedge fund*	For purposes of reporting information in Sections 1b, 1c, 2b, 3 and 4
• You must aggregate any *private funds* that are part of the same *master-feeder arrangement* (even if you did not, or were not permitted to, aggregate these *private funds* for purposes of *Form ADV Section 7.B.1*)	• You must report answers on an aggregated basis for any *private funds* that are part of the same *master-feeder arrangement* (even if you did not, or were not permitted to, aggregate these *private funds* for purposes of *Form ADV Section 7.B.1*)
• You must aggregate any *private funds* that are part of the same *parallel fund structure*	• You must file a separate Section 1b, 1c, 2b, 3 or 4, as applicable, for each *parallel fund* (or, in the case of Section 2b, each *parallel fund* that is part of a *parallel fund structure* collectively comprising a *qualifying hedge fund*)
• Any *parallel managed account* must be aggregated with the largest *private fund* to which that *parallel managed account* relates	• Any *parallel managed account* must be aggregated with the largest *private fund* to which that *parallel managed account* relates
• You must treat any *private fund* or *parallel managed account* advised by any of your *related persons* as though it were advised by you (even if you have not identified that *related person* in Question 1(b) as a *related person* for which you are filing Form PF)	• You should not report information for any *private fund* or *parallel managed account* advised by any of your *related persons* unless you have identified that *related person* in Question 1(b) as a *related person* for which you are filing Form PF

In subsequent updates or amendments to this Form PF, you must report information in a manner that is consistent with previous filings made with respect to any *private fund*.

6. According to Instruction 5, I am required to aggregate funds or accounts to determine whether I meet a threshold or for reporting purposes. How do I "aggregate" funds or accounts for these purposes?

Where two or more *parallel funds* or master-feeder funds are aggregated in accordance with Instruction 5, you must treat the aggregated funds as if they were all one *private fund*. Investments that a *feeder fund* makes in a *master fund* should be disregarded but other investments of the *feeder fund* should be treated as though they were investments of the aggregated fund.

Similarly, for all purposes under this Form PF, assets held in *parallel managed accounts* should be treated as assets of the *private funds* with which they are aggregated.

Example 1. You advise a *master-feeder arrangement* with one *feeder fund*. The *feeder fund* has invested $500 in the *master fund* and holds a *foreign exchange derivative* with a notional value of $100. The *master fund* has used the $500 received from the *feeder fund* to invest in *corporate bonds*. Neither

fund has any other assets or liabilities.

For all purposes under this Form PF, this *master-feeder arrangement* should be treated as a single *private fund* whose only investments are $500 in *corporate bonds* and a *foreign exchange derivative* with a notional value of $100.

Example 2. You advise a *parallel fund structure* consisting of two *hedge funds*, named *parallel fund* A and *parallel fund* B. You also advise a related *parallel managed account*. The account and each fund have invested in *corporate bonds* of Company X and have no other assets or liabilities. The value of *parallel fund* A's investment is $400, the value of *parallel fund* B's investment is $300 and the value of the account's investment is $200.

For purposes of determining whether either of the *parallel funds* is a *qualifying hedge fund*, the entire *parallel fund structure* and the related *parallel managed account* should be treated as a single *private fund* whose only asset is $900 of *corporate bonds* issued by Company X.

For purposes of responding to questions regarding the funds, information about each *parallel fund* should be reported separately but the assets of the *parallel managed account* should be treated as assets of the largest *private fund* to which it relates. Accordingly, *parallel fund* A should be treated as a *private fund* whose only asset is $600 of *corporate bonds* issued by Company X, while *parallel fund* B should be treated as a separate *private fund* whose only asset is $300 of *corporate bonds* issued by Company X.

7. I advise a *private fund* that only invests in other *private funds*. Should I include this "fund of funds" in responses to Form PF?

For each "fund of funds" that you advise, complete Section 1b. For all other purposes, you should disregard any "fund of funds." For example, where questions request aggregate information regarding the *private funds* you advise, do not include the assets or liabilities of any "fund of funds."

For purposes of this Form PF, a *private fund* is a "fund of funds" only if it invests exclusively in other *private funds*. (Please note that a "fund of funds" for purposes of question 8 of *Form ADV Section 7.B.1* may not be a "fund of funds" for purposes of Form PF.)

8. When am I required to update Form PF?

You are required to update Form PF at the following times:

Annual updates Unless you are a *large private fund adviser*, you must file an *annual update* each year that updates the answers to all Items in this Form PF. Your *annual update* is due no later than the last day on which you may timely file your "annual updating amendment" to Form ADV (currently, your *annual update* would be due 90 days after the end of your fiscal year).

Quarterly updates If you are a *large private fund adviser*, then within 15 calendar days after the end of each calendar quarter, you must file a *quarterly update* that

updates the answers to all Items in this Form PF. *Quarterly updates* are filed in lieu of *annual updates*.

Transition filing — If you need to transition from quarterly to annual filing because you are no longer a *large private fund adviser*, then you must complete and file Item A of Section 1a and check the box in Section 1a indicating that you are making your final filing as a *large private fund adviser*. You must file your transition filing no later than the last day on which your next *quarterly update* would be timely.

Final filing — If you are no longer required to file Form PF, then you must complete and file Item A of Section 1a and check the box in Section 1a indicating that you are making your final filing. You must file your final filing no later than the last day on which your next Form PF update would be timely. This applies to all Form PF filers.

Failure to update your Form PF as required by these instructions is a violation of *SEC* and, where applicable, *CFTC* rules and could lead to revocation of your registration.

9. How do I obtain *private fund* identification numbers for my *reporting funds*?

Each *private fund* must have an identification number for purposes of reporting on *Form ADV* and Form PF. *Private fund* identification numbers can only be obtained by filing *Form ADV*.

If you need to obtain a *private fund* identification number and you are required to file a *quarterly update* of Form PF prior to your next annual update of *Form ADV*, then you must acquire the identification number by filing an other-than-annual amendment to your *Form ADV*. When filing an other-than-annual amendment for this purpose, you must complete and file all of *Form ADV Section 7.B.1* for the new *private fund*.

See Instruction 6 to Part 1A of *Form ADV* and General Instruction 4 to *Form ADV* for additional information regarding the acquisition and use of *private fund* identification numbers and filing other-than-annual amendments.

10. Who must sign my Form PF or update?

The individual who signs the Form PF depends upon your form of organization:

- For a sole proprietorship, the sole proprietor.
- For a partnership, a general partner.
- For a corporation, an authorized principal officer.
- For a limited liability company, a managing member or authorized person.
- For a SID, a principal officer of your bank who is directly engaged in the management, direction or supervision of your investment advisory activities.
- For all others, an authorized individual who participates in managing or directing your affairs.

The signature does not have to be notarized and should be a typed name.

If you and one or more of your *related persons* are filing a single Form PF, then Form PF may be signed by one or more individuals; however, the individual, or the individuals collectively, must

have authority, as provided above, to sign both on your behalf and on behalf of all such *related persons*.

11. How do I file my Form PF?

You must file Form PF electronically through the [Form PF filing system] website (<www.[ ].com>), which contains detailed filing instructions. Questions regarding filing through the [Form PF filing system] should be addressed to the [Form PF filing system operator at [xxx-xxx-xxxx]].

12. Are there filing fees?

Yes, you must pay a filing fee for your Form PF filings. The Form PF filing fee schedule is published at <http://www.sec.gov/[ ]> and <http://www. [ ].com>.

13. What if I am not able to file electronically?

A temporary hardship exemption is available if you encounter unanticipated technical difficulties that prevent you from making a timely filing with the [Form PF filing system], such as a computer malfunction or electrical outage. This exemption does not permit you to file on paper; instead, it extends the deadline for an electronic filing for seven "business days" (as such term is used in *SEC* rule 204(b)-1(f)).

To request a temporary hardship exemption, you must complete and file on paper Item A of Section 1a and Section 5 of Form PF, checking the box in Section 1a indicating that you are requesting a temporary hardship exemption. Mail one manually signed original and one copy of your exemption filing to: U.S. Securities and Exchange Commission, Branch of Regulations and Examinations, Mail Stop 0-25, 100 F Street NE, Washington, DC 20549. You must preserve in your records a copy of any temporary hardship exemption filing. Any request for a temporary hardship exemption must be filed no later than one business day after the electronic Form PF filing was due. For more information, see *SEC* rule 204(b)-1(f).

14. How should I enter requested information?

Unless otherwise indicated,

- provide the requested information as of the close of business on the *data reporting date*;
- if information is requested for any month or quarter, provide the requested information as of the close of business on the last calendar day of the month or quarter, respectively;
- if a question asks for information expressed as a percentage, enter a percentage rounded to the nearest one-hundredth of one percent;
- if a question asks for a monetary value, provide the information in U.S. dollars as of the *data reporting date*, rounded to the nearest thousand;
- if a question asks for a numerical value other than a percentage or a dollar value, provide information rounded to the nearest whole number; and

- unless otherwise required by one of the preceding bullets, report using the same calculations you use internally and for investor reports.

Form PF Section 1a	Information about you and your *related persons* (to be completed by all Form PF filers)	Page 1 of 44

Section 1a: Information about you and your *related persons*

WARNING: Complete this Form PF truthfully. False statements or omissions may result in revocation of your registration or criminal prosecution. You must keep this Form PF updated by filing periodic amendments. See Form PF General Instruction 8.

Check the box that indicates what you would like to do:

A. If you are not a *large private fund adviser*:

- ☐ Submit an initial filing
- ☐ Submit an *annual update*
- ☐ Submit a final filing
- ☐ Request a temporary hardship exemption

B. If you are a *large private fund adviser*:

- ☐ Submit an initial filing
- ☐ Submit a *quarterly update* (including fourth quarter updates)
- ☐ Transition to annual reporting
- ☐ Submit a final filing
- ☐ Request a temporary hardship exemption

Item A. Information about you

1. (a) Provide your name and the other identifying information requested below.

(This should be your full legal name. If you are a sole proprietor, this will be your last, first, and middle names. If you are a SID, *enter the full legal name of your bank. Please use the same name that you use in your* Form ADV.*)*

Legal name	SEC 801-Number, if any	NFA ID Number, if any

(b) Provide the following information for each of the *related persons*, if any, with respect to which you are reporting information on this Form PF:

Legal name	SEC 801-Number, if any	NFA ID Number, if any

Form PF Section 1a	**Information about you and your *related persons*** (to be completed by all Form PF filers)	Page 2 of 44

2. Signatures of sole proprietor or authorized representative *(see Instruction 10 to Form PF).*

Signature on behalf of the firm *and its* related persons*:*

I, the undersigned, sign this Form PF on behalf of, and with the authority of, the *firm*. In addition, I sign this Form PF on behalf of, and with the authority of, each of the *related persons* identified in Question 1(b) (other than any *related person* for which another individual has signed this Form PF below). The *firm*, each *related person* for which I am signing this Form PF, and I all certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form PF relating in whole or in part to the *firm* or any such *related person* are true and correct, and that I am signing this Form PF execution page as a free and voluntary act.

To the extent that Section 1 or 2 of this Form PF is filed in accordance with a regulatory obligation imposed by *CEA* rule 4.27(d), the *firm*, each *related person* for which I am signing this Form PF, and I all accept that any false or misleading statement of a material fact therein or material omission therefrom shall constitute a violation of section 6(c)(2) of the *CEA*.

Name of individual:	
Signature:	
Title:	
Email address:	
Telephone contact number (include area code and, if outside the United States, country code):	
Date:	

Signature on behalf of related persons*:*

I, the undersigned, sign this Form PF on behalf of, and with the authority of, the *related person(s)* identified below. Each such *related person* and I certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form PF relating in whole or in part to any such *related person* are true and correct, and that I am signing this Form PF execution page as a free and voluntary act.

To the extent that Section 1 or 2 of this Form PF is filed in accordance with a regulatory obligation imposed by *CEA* rule 4.27(d), each *related person* identified below and I all accept that any false or misleading statement of a material fact therein or material omission therefrom shall constitute a violation of section 6(c)(2) of the *CEA*.

Name of each *related person* on behalf of which this individual is signing:	
Name of individual:	
Signature:	
Title:	
Email address:	
Telephone contact number (include area code	

Form PF Section 1a	Information about you and your *related persons* (to be completed by all Form PF filers)	Page 3 of 44

and, if outside the United States, country code):

Date:

Item B. Information about assets of *private funds* that you advise

3. Assets under management (in U.S. dollars):

(Your regulatory assets under management *for purposes of Form PF may differ from the amount you reported on* Form ADV *if you are filing Form PF on a quarterly basis or if you advise any* parallel managed accounts *that are not "securities portfolios" within the meaning of Instruction 5.b to* Form ADV.*)*

(a) Total *regulatory assets under management*.....

(b) Total *net assets under management*.....

4. Of your *regulatory assets under management* and your *net assets under management* listed above, provide a breakdown of the dollar amount attributable to the following types of *private funds* that you advise:

(The totals of items (a) through (h) should equal the amounts reported in response to Question 3.)

	Regulatory assets under management	Net assets under management
(a) *Hedge funds*.....		
(b) *Liquidity funds*.....		
(c) *Private equity funds*.....		
(d) *Real estate funds*.....		
(e) *Securitized asset funds*.....		
(f) *Venture capital funds*.....		
(g) *Other private funds*.....		
(h) Funds and accounts other than *private funds*...		

Form PF Section 1a	Information about you and your *related persons* (to be completed by all Form PF filers)	Page 4 of 44

Item C. Miscellaneous

5. You may use the space below to explain any assumptions that you made in responding to any question in this Form PF. Assumptions must be in addition to, or reasonably follow from, any instructions or other guidance provided in, or in connection with, Form PF. If you are aware of any instructions or other guidance that may require a different assumption, provide a citation and explain why that assumption is not appropriate for this purpose.

Question number	Description

Form PF Section 1b	Information about the *private funds* you advise (to be completed by all Form PF filers)	Page 5 of 44

Section 1b: Information about the *private funds* you advise

You must complete a separate Section 1b for each *private fund* that you advise. You must aggregate information regarding *private funds* as provided in the General Instructions.

Item A. *Reporting fund* identifying information

6. (a) Name of the *reporting fund*.....

   (b) *Private fund* identification number of the *reporting fund*.....

   (c) *NFA* identification number of the *reporting fund*, if applicable .....

   (d) *LEI* of the *reporting fund*, if applicable.....

Item B. Assets, financing and investor concentration

7. *Gross asset value* of *reporting fund*.....

   (This amount may differ from the amount you reported in response to question 11(a) of Form ADV Section 7.B.1. *For instance, the amounts may not be the same if you are filing Form PF on a quarterly basis, if you are required to aggregate a* master-feeder arrangement *for purposes of this Form PF and you did not aggregate that* master-feeder arrangement *for purposes of* Form ADV Section 7.B.1. *or if you are required to aggregate a* parallel managed account *for purposes of this Form PF.)*

8. *Net asset value* of *reporting fund*.....

   (This amount may differ from the amount you reported in response to question 11(b) of Form ADV Section 7.B.1. *For instance, the amounts may not be the same if you are filing Form PF on a quarterly basis, if you are required to aggregate a* master-feeder arrangement *for purposes of this Form PF and you did not aggregate that* master-feeder arrangement *for purposes of* Form ADV Section 7.B.1. *or if you are required to aggregate a* parallel managed account *for purposes of this Form PF.)*

9. Provide the following information regarding the value of the *reporting fund's borrowings* and the types of creditors.

   (You are not required to respond to this question for any reporting fund *with respect to which you are answering Question 37 in Section 2b.)*

   (The percentages borrowed from the specified types of creditors should add up to 100%.)

   Dollar amount of total *borrowings* .....

   (a) Percentage borrowed from *U.S. financial institutions*.....

   (b) Percentage borrowed from *non-U.S. financial institutions*.....

   (c) Percentage borrowed from creditors that are not *financial institutions*.....

Form PF Section 1b	**Information about the *private funds* you advise** (to be completed by all Form PF filers)	Page 6 of 44

10. Identify each creditor, if any, to which the *reporting fund* owed an amount in respect of *borrowings* equal to or greater than 5% of the *reporting fund's net asset value* as of the *data reporting date*. For each such creditor, provide the amount owed to that creditor.

Name of creditor	**Dollar amount owed to each creditor**
[drop-down list of creditor/counterparty names] Other: _____	
[repeat drop-down list of creditor/counterparty names] Other: _____	
[repeat drop-down list of creditor/counterparty names] Other: _____	

11. Provide the aggregate value of all derivative positions of the *reporting fund*..... |

(The value of any derivative should be its total gross *notional value, except that the value of an option should be its delta adjusted notional value. Do not net long and short positions.)*

(You are not required to respond to this question for any reporting fund *with respect to which you are answering Question 38 in Section 2b.)*

12. Provide the following information regarding investor concentration.

(For purposes of this question, if you know that two or more beneficial owners of the reporting fund *are* affiliated *with each other, you should treat them as a single beneficial owner. Also, if you are aggregating any* parallel managed accounts *with the* reporting fund *in accordance with the General Instructions, you should treat the account owners as beneficial owners of the* reporting fund.*)*

(a) Specify the total number of beneficial owners of the *reporting fund's* equity interests.....

(b) Specify the percentage of the *reporting fund's* equity that is beneficially owned by the five beneficial owners having the largest equity interests in the *reporting fund*.....

Item C. *Reporting fund* performance

13. When does the fiscal year of the *reporting fund* end?

(Please respond with the last day of the reporting fund's *fiscal year even if a* feeder fund *or* parallel managed account *aggregated with the* reporting fund *has a different fiscal year end.)*

☐ March 31 ☐ June 30 ☐ September 30 ☐ December 31 ☐ Other: _____

14. For each period specified below, provide the following information expressed as a percentage:

(i) the change in the *reporting fund's net asset value*; (ii) the *reporting fund's* performance, without deducting performance fees or charges; and (iii) the *reporting fund's* performance, after deducting performance fees and charges.

(Change in net asset value *should be determined by including subscriptions and redemptions as of the last day of the relevant period and deducting fees and expenses (including performance fees, performance allocation charges or accruals, fixed advisory fees and operating, trading and investment expenses).)*

(Performance should be determined by deducting fees and expenses (including fixed advisory fees and operating, trading and investment expenses). Include or exclude performance fee or performance allocation charges or accruals as indicated below (if you do not accrue a performance fee or performance allocation charge throughout the year, then your response should include a pro forma accrual of the fee or charge where indicated).)

(You must respond based on the performance of the equity class that has been in existence since the inception (or the representative limited partner invested since inception) of the reporting fund *("inception class"), inclusive of all investments made by the fund and based on the inception class fee structure. If you are aggregating one or more* private funds *and/or* parallel managed accounts *with the* reporting fund *in accordance with Instruction 5, use the inception class of the oldest* private fund *in the group.)*

(If your fiscal year is different from the reporting fund's *fiscal year, then for any portion of the* reporting fund's *fiscal year that has not been completed as of the* data reporting date, *provide the relevant information from that portion of the* reporting fund's *preceding fiscal year.)*

	***NAV* change**	**Performance**	
		Without deducting performance fees/charges	**After deducting performance fees/charges**
(a) 1st month of *reporting fund's* fiscal year.....			
(b) 2nd month of *reporting fund's* fiscal year			
(c) 3rd month of *reporting fund's* fiscal year.....			
(d) First quarter.....			
(e) 4th month of *reporting fund's* fiscal year			
(f) 5th month of *reporting fund's* fiscal year			
(g) 6th month of *reporting fund's* fiscal year			
(h) Second quarter			
(i) 7th month of *reporting fund's* fiscal year			
(j) 8th month of *reporting fund's* fiscal year			
(k) 9th month of *reporting fund's* fiscal year			
(l) Third quarter			
(m) 10th month of *reporting fund's* fiscal year			
(n) 11th month of *reporting fund's* fiscal year			

Form PF Section 1b	**Information about the *private funds* you advise** (to be completed by all Form PF filers)	Page 8 of 44

(o) 12th month of *reporting fund's* fiscal year			
(p) Fourth quarter			
(q) Twelve-month period ending on the *data reporting date*			

Form PF Section 1c	Information about the *hedge funds* you advise (to be completed by all Form PF filers that advise *hedge funds*)	Page 9 of 44

Section 1c: Information about the *hedge funds* you advise

You must complete a separate Section 1c for each *hedge fund* that you advise. You must aggregate information regarding *hedge funds* as provided in the General Instructions.

Item A. *Reporting fund* identifying information

15. (a) Name of the *reporting fund* .....

(b) *Private fund* identification number of the *reporting fund* .....

Item B. Certain information regarding the *reporting fund*

16. Does the *reporting fund* have a single primary investment strategy or multiple strategies?

☐ Single primary strategy ☐ Multi-strategy

17. Indicate which of the strategies below best describe the investment strategies that the *reporting fund* used during the *reporting period*. For each strategy that you have selected, provide a good faith estimate of the percentage of the *reporting fund's net asset value* represented by that strategy.

(Select the strategies that best describe the reporting fund's investment strategies, even if the descriptions below do not precisely match your characterization of those strategies; select "other" only if a strategy that the reporting fund uses is significantly different from any of the strategies identified below. The total among all strategies should add up to 100%.)

Strategy	% of *NAV*
☐ Equity, Market Neutral	
☐ Equity, Directional	
☐ Equity, Short Bias	
☐ Macro, Active Trading (high frequency trading)	
☐ Macro, Commodity	
☐ Macro, Currency	
☐ Macro, Global Macro	
☐ Relative Value, Fixed Income Asset Backed	
☐ Relative Value, Fixed Income Convertible Arbitrage	
☐ Relative Value, Fixed Income Corporate	
☐ Relative Value, Fixed Income Sovereign	
☐ Relative Value, Volatility	
☐ Event, Activist	

Form PF Section 1c	**Information about the *hedge funds* you advise** (to be completed by all Form PF filers that advise *hedge funds*)	Page 10 of 44

☐ Event, Distressed/Restructuring	
☐ Event, Merger Arbitrage/Special Situations	
☐ Event, Private Issue/Reg D	
☐ Investment in other funds	
☐ Other: _____	

18. During the *reporting period*, approximately what percentage of the *reporting fund's net asset value* was managed using computer-driven trading algorithms to select investments?

(In your response, please do not include algorithms that are used solely for trade execution.)

☐ 0% ☐ less than 10% ☐ 10-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ 100%

19. Identify the five trading counterparties to which the *reporting fund* has the greatest net counterparty credit exposure, measured as a percentage of the *reporting fund's net asset value.*

(For purposes of this question, you should treat affiliated *entities as a single group and* CCPs *should not be regarded as trading counterparties.)*

(In your response, you should take into account: (i) mark to market gains and losses on derivatives; (ii) margin posted by the counterparty; and (iii) any loans or loan commitments.)

(However, you should not take into account: (i) assets that the counterparty is holding in custody on your behalf; (ii) securities transactions that have been executed but not yet settled; (iii) margin held in a customer omnibus account at a CCP, *which should be considered exposure to the* CCP *rather than a trading counterparty; or (iv) holdings of debt or equity securities issued by the counterparty.)*

	Name of counterparty	**Exposure (% of *reporting fund's net asset value*)**
(a)	[repeat drop-down list of creditor/counterparty names] Other: _____	
(b)	[repeat drop-down list of creditor/counterparty names] Other: _____	
(c)	[repeat drop-down list of creditor/counterparty names] Other: _____	
(d)	[repeat drop-down list of creditor/counterparty names] Other: _____	
(e)	[repeat drop-down list of creditor/counterparty names] Other: _____	

Form PF Section 1c	**Information about the *hedge funds* you advise** (to be completed by all Form PF filers that advise *hedge funds*)	Page 11 of 44

20. Identify the five trading counterparties that have the greatest net counterparty credit exposure to the *reporting fund*, measured in U.S. dollars.

(For purposes of this question, you should treat affiliated *entities as a single group and* CCPs *should not be regarded as trading counterparties.)*

(In your response, you should take into account: (i) mark to market gains and losses on derivatives; (ii) margin posted to the counterparty; and (iii) any loans or loan commitments.)

(However, you should not take into account: (i) assets that the counterparty is holding in custody on your behalf; (ii) securities transactions that have been executed but not yet settled; (iii) margin held in a customer omnibus account at a CCP, *which should be considered exposure to the* CCP *rather than a trading counterparty; or (iv) holdings of debt or equity securities issued by the counterparty.)*

	Name of counterparty	**Exposure (in U.S. dollars)**
(a)	[repeat drop-down list of creditor/counterparty names] Other: _____	
(b)	[repeat drop-down list of creditor/counterparty names] Other: _____	
(c)	[repeat drop-down list of creditor/counterparty names] Other: _____	
(d)	[repeat drop-down list of creditor/counterparty names] Other: _____	
(e)	[repeat drop-down list of creditor/counterparty names] Other: _____	

21. Provide the following information regarding your use of trading and clearing mechanisms during the *reporting period.*

(Provide good faith estimates of the mode in which instruments were traded and cleared by the reporting fund, *and not the market as a whole. For purposes of this question, a "trade" includes any transaction, whether entered into on a bilateral basis or through an exchange, trading facility or other system. With respect to clearing, transactions for which margin is held in a customer omnibus account at a* CCP *should be considered cleared by a* CCP. *Tri-party* repo *applies where* repo *collateral is held at a custodian (not including a* CCP*) that acts as a third party agent to both the* repo *buyer and the* repo *seller.)*

(An instrument should only be included in a single category for each of the trading and clearing portions of this question. The total in each row should add up to 100%.)

Form PF Section 1c	**Information about the *hedge funds* you advise** (to be completed by all Form PF filers that advise *hedge funds*)	Page 12 of 44

Trading of securities:

	On a regulated exchange	***OTC***
(a) Estimated % (in terms of market value) of equity securities (other than derivatives) that were traded by the *reporting fund*		
(b) Estimated % (in terms of market value) of debt securities (other than derivatives) that were traded by the *reporting fund*		
(c) Estimated % (in terms of market value) of *ABS* that were traded by the *reporting fund*		

Clearing of securities:

	Cleared by a *CCP*	**Bilaterally transacted (i.e., not cleared by a *CCP*)**
(d) Estimated % (in terms of market value) of equity securities (other than derivatives) that were traded by the *reporting fund* and		
(e) Estimated % (in terms of market value) of debt securities (other than derivatives) that were traded by the *reporting fund* and		
(f) Estimated % (in terms of market value) of *ABS* that were traded by the *reporting fund* and		

Trading of derivatives:

	On a regulated exchange or swap execution facility	***OTC***
(g) Estimated % (in terms of notional value) of *credit derivatives* that were traded by the *reporting fund*		
(h) Estimated % (in terms of notional value) of *interest rate derivatives* that were traded by the *reporting fund*		
(i) Estimated % (in terms of notional value) of *commodity* derivatives that were traded by the *reporting fund*		
(j) Estimated % (in terms of notional value) of equity derivatives that were traded by the *reporting fund*		
(k) Estimated % (in terms of notional value) of *foreign exchange derivatives* that were traded by the *reporting fund*		

Form PF Section 1c	Information about the *hedge funds* you advise (to be completed by all Form PF filers that advise *hedge funds*)	Page 13 of 44

(l) Estimated % (in terms of notional value) of *other derivatives* that were traded by the *reporting fund*	

Clearing of derivatives:

	Cleared by a *CCP*	Bilaterally transacted (i.e., not cleared by a *CCP*)
(m) Estimated % (in terms of notional value) of *credit derivatives* that were traded by the *reporting fund* and		
(n) Estimated % (in terms of notional value) of *interest rate derivatives* that were traded by the *reporting fund* and		
(o) Estimated % (in terms of notional value) of *commodity* derivatives that were traded by the *reporting fund* and		
(p) Estimated % (in terms of notional value) of equity derivatives that were traded by the *reporting fund* and		
(q) Estimated % (in terms of notional value) of *foreign exchange derivatives* that were traded by the *reporting fund* and		
(r) Estimated % (in terms of notional value) of *other derivatives* that were traded by the *reporting fund* and		

Clearing of *repos*:

	Cleared by a *CCP*	Bilaterally transacted (i.e., not cleared by a *CCP*)	Constitute a tri-party *repo*
(s) Estimated % (in terms of market value) of *repo* trades that are entered into by the *reporting fund* and.....			

22. What percentage of the *reporting fund's net asset value* relates to transactions that are not described in any of the categories listed in items (a) through (s) of Question 21?

Form PF **Section 2a**	**Aggregated information about *hedge funds* that you advise** (to be completed by *large private fund advisers* only)	Page 14 of 44

Section 2a: Aggregated information about *hedge funds* that you advise

Item A. Exposure of *hedge fund* assets

23. Aggregate *hedge fund* exposures.

(Give a dollar value for long and short positions as of the last day in each month of the reporting period, *by* sub-asset class, *including all exposure whether held physically, synthetically or through derivatives. The value of any derivative should be its* total gross *notional value, except that the value of an option should be its delta adjusted notional value. Include any closed out and* OTC *forward positions that have not yet expired/matured. Do not net positions within* sub-asset classes. *Positions held in side-pockets should be included as positions of the* hedge funds. *Provide the absolute value of short positions.)*

(Each position should only be included in a single sub-asset class.*)*

	1st Month		**2nd Month**		**3rd Month**	
	LMV	***SMV***	***LMV***	***SMV***	***LMV***	***SMV***
Listed equity						
Issued by *financial institutions*						
Other *listed equity*						
Unlisted equity						
Issued by *financial institutions*						
Other *unlisted equity*						
Listed equity derivatives						
Related to *financial institutions*						
Other *listed equity derivatives*						
Unlisted equity derivatives						
Related to *financial institutions*						
Other *unlisted equity derivatives*						
Corporate bonds issued by *financial institutions* (other than *convertible bonds*)						
Investment grade						
Duration						
Non-investment grade						
Duration						
Corporate bonds not issued by *financial institutions* (other than *convertible bonds*)						
Investment grade						
Duration						

Form PF Section 2a	Aggregated information about *hedge funds* that you advise (to be completed by *large private fund advisers* only)	Page 15 of 44

Non-investment grade						
Duration						

Convertible bonds issued by *financial institutions*

Investment grade						
Duration						
Non-investment grade						
Duration						

Convertible bonds not issued by *financial institutions*

Investment grade						
Duration						
Non-investment grade						
Duration						

Sovereign bonds and municipal bonds

U.S. treasury securities						
Duration						
Agency securities						
Duration						
GSE bonds						
Duration						
Sovereign bonds issued by *G10* countries other than the U.S.						
Duration						
Other *sovereign bonds* (including supranational bonds)						
Duration						
U.S. state and local bonds						
Duration						

Loans

Leveraged loans						
Duration						
Certificates of deposit						
Duration						
Other loans (not including *repos*)						
Duration						

Form PF Section 2a	**Aggregated information about *hedge funds* that you advise** (to be completed by *large private fund advisers* only)	Page 16 of 44

Repos						
Duration						
ABS/structured products						
RMBS						
Duration						
CMBS						
Duration						
Agency MBS						
Duration						
Auto ABS						
Duration						
Consumer ABS						
Duration						
ABCP						
Duration						
CDO						
Duration						
CLO						
Duration						
WBS						
Duration						
Other ABS						
Duration						
Other structured products						
Credit derivatives						
Single name CDS						
Index CDS						
Exotic CDS						
Foreign exchange derivatives						
Non-U.S. currency holdings						
Interest rate derivatives						
Commodities (derivatives)						
Crude oil						

Form PF Section 2a	Aggregated information about *hedge funds* that you advise (to be completed by *large private fund advisers* only)	Page 17 of 44

Natural gas						
Gold						
Power						
Other commodities						

Commodities (physical)

Crude oil						
Natural gas						
Gold						
Power						
Other commodities						

Other derivatives						

Investments in internal private funds						
Investments in external private funds						
Investments in registered investment companies						

Investments in funds for cash management purposes						
Cash and cash equivalents (other than instruments covered by another category above)						
Investments in other sub-asset classes						

24. For each month of the *reporting period*, provide the *turnover rate* for the aggregate portfolio of the *hedge funds* that you advise.

	1st Month	2nd Month	3rd Month
Turnover rate (as a percentage)			

25. Provide a geographical breakdown of the investments made by the *hedge funds* that you advise (by percentage of the *hedge funds'* aggregate gross asset value).

(Except for foreign exchange derivatives, *investments should be allocated by the jurisdiction of organization of the issuer or counterparty, as applicable. In the case of* foreign exchange derivatives, *investments should be allocated by the country to whose currency the* reporting fund *has exposure through the derivative. The total should add up to 100%.)*

(The value of any derivative should be its total gross *notional value, except that the value of an option should be its delta adjusted notional value. Do not net long and short positions.)*

Form PF Section 2a	**Aggregated information about *hedge funds* that you advise** (to be completed by *large private fund advisers* only)	Page 18 of 44

Region	**%**
Americas	
(a) Brazil	
(b) Canada	
(c) Mexico	
(d) United States	
(e) Other Americas	
Europe	
(f) *EEA*	
(g) Russia	
(h) Other Europe	
Asia and Pacific	
(i) Australia	
(j) China (including Hong Kong)	
(k) India	
(l) Japan	
(m) Korea, Republic of	
(n) Middle East	
(o) Other Asia and Pacific	
Africa	
(p) South Africa	
(q) Other Africa	

Form PF Section 2b	Information about *qualifying hedge funds* that you advise (to be completed by *large private fund advisers* only)	Page 19 of 44

Section 2b: Information about *qualifying hedge funds* that you advise.

You must complete a separate Section 2b for each *qualifying hedge fund* that you advise (or, in the case of *parallel fund structures* that collectively comprise a *qualifying hedge fund*, each *parallel fund* that is part of that *parallel fund structure*). You must aggregate information regarding *qualifying hedge funds* as provided in the General Instructions.

Item A. *Reporting fund* identifying information

26. (a) Name of the *reporting fund* .....

(b) *Private fund* identification number of the *reporting fund* .....

Item B. *Reporting fund* exposures and trading

Check this box if you advise only one *hedge fund*. If you check this box, you may skip Question 27. ☐

27. *Reporting fund* exposures.

(Give a dollar value for long and short positions as of the last day in each month of the reporting period, *by* sub-asset class, *including all exposure whether held physically, synthetically or through derivatives. The value of any derivative should be its* total gross *notional value, except that the value of an option should be its delta adjusted notional value. Include any closed out and* OTC *forward positions that have not yet expired/matured. Do not net positions within* sub-asset classes. *Positions held in side-pockets should be included as positions of the* reporting fund. *Provide the absolute value of short positions.)*

(Each position should only be included in a single sub-asset class.*)*

	1st Month		2nd Month		3rd Month	
	LMV	*SMV*	*LMV*	*SMV*	*LMV*	*SMV*
Listed equity						
Issued by *financial institutions*						
Other *listed equity*						
Unlisted equity						
Issued by *financial institutions*						
Other *unlisted equity*						
Listed equity derivatives						
Related to *financial institutions*						
Other *listed equity derivatives*						
Unlisted equity derivatives						
Related to *financial institutions*						

Form PF Section 2b	**Information about *qualifying hedge funds* that you advise** (to be completed by *large private fund advisers* only)	Page 20 of 44

Other *unlisted equity derivatives*						
Corporate bonds issued by *financial institutions* (other than *convertible bonds*)						
Investment grade						
Duration						
Non-investment grade						
Duration						
Corporate bonds not issued by *financial institutions* (other than *convertible bonds*)						
Investment grade						
Duration						
Non-investment grade						
Duration						
Convertible bonds issued by *financial institutions*						
Investment grade						
Duration						
Non-investment grade						
Duration						
Convertible bonds not issued by *financial institutions*						
Investment grade						
Duration						
Non-investment grade						
Duration						
Sovereign bonds and municipal bonds						
U.S. treasury securities						
Duration						
Agency securities						
Duration						
GSE bonds						
Duration						
Sovereign bonds issued by ~~*G10*~~ countries other than the U.S.						
Duration						

Form PF Section 2b	**Information about *qualifying hedge funds* that you advise** (to be completed by *large private fund advisers* only)	Page 21 of 44

Other *sovereign bonds* (including supranational bonds)						
Duration						
U.S. state and local bonds						
Duration						
Loans						
Leveraged loans						
Duration						
Certificates of deposit						
Duration						
Other loans (not including *repos*)						
Duration						
Repos						
Duration						
ABS/structured products						
RMBS						
Duration						
CMBS						
Duration						
Agency MBS						
Duration						
Auto ABS						
Duration						
Consumer ABS						
Duration						
ABCP						
Duration						
CDO						
Duration						
CLO						
Duration						
WBS						
Duration						
Other ABS						
Duration						
Other structured products						

Form PF Section 2b	**Information about *qualifying hedge funds* that you advise** (to be completed by *large private fund advisers* only)	Page 22 of 44

Credit derivatives						
Single name CDS						
Index CDS						
Exotic CDS						
Foreign exchange derivatives						
Non-U.S. currency holdings						
Interest rate derivatives						
Commodities (derivatives)						
Crude oil						
Natural gas						
Gold						
Power						
Other commodities						
Commodities (physical)						
Crude oil						
Natural gas						
Gold						
Power						
Other commodities						
Other derivatives						
Investments in internal private funds						
Investments in external private funds						
Investments in registered investment companies						
Investments in funds for cash management purposes						
Cash and cash equivalents (other than instruments covered by another category above)						
Investments in other sub-asset classes						

28. Provide the following information regarding the liquidity of the *reporting fund's* portfolio.

Form PF Section 2b	**Information about *qualifying hedge funds* that you advise** (to be completed by *large private fund advisers* only)	Page 23 of 44

(Specify the percentage of the reporting fund's *positions that may be liquidated within each of the periods specified below. Each investment should be assigned to only one period and such assignment should be based on the shortest period during which such position could reasonably be liquidated at or near its carrying value. Use good faith estimates for liquidity based on market conditions over the* reporting period *and assuming no fire-sale discounting (e.g., for listed equities, assume that you will not trade more than 20% of the 90 day average daily trading volume in a single day). In the event that individual positions are important contingent parts of the same trade, group all those positions under the liquidity period of the least liquid part (so, for example, in a convertible bond arbitrage trade, the liquidity of the short should be the same as the* convertible bond*). Exclude* cash and cash equivalents.*)*

(The total should add up to 100%.)

	% of portfolio capable of being liquidated within
1 day or less	
2 days – 7 days	
8 days – 30 days	
31 days – 90 days	
91 days – 180 days	
181 days – 364 days	
365 days or longer	

		1st Month	**2nd Month**	**3rd Month**
29.	Dollar value of *reporting fund's unencumbered cash*			
30.	Total number of open positions (approximate), determined on the basis of each position and not the issuer or counterparty			

31. For each open position of the *reporting fund* that represents 5% or more of the *reporting fund's net asset value*, provide the information requested below.

(This question relates to investment portfolio concentration. For purposes of this question, two or more positions in securities (or derivatives based on securities) of a single issuer should be treated as a single position and the sub-asset class *specified should be the* sub-asset class *of the security accounting for the greatest proportion of the aggregate position. Do not net long and short positions. Exclude* cash and cash equivalent *instruments.)*

		% of net asset value	***Sub-asset class***
(a)	First month of the *reporting period*		
	(i) Position		[drop-down of asset classes]
	(ii) Position		[drop-down of asset classes]

Form PF Section 2b	**Information about *qualifying hedge funds* that you advise** (to be completed by *large private fund advisers* only)	Page 24 of 44

(b) Second month of the *reporting period*

(i) Position		[drop-down of asset classes]
(ii) Position		[drop-down of asset classes]

(c) Third month of the *reporting period*

(i) Position		[drop-down of asset classes]
(ii) Position		[drop-down of asset classes]

32. For each of the top five trading counterparties listed in your response to Question 19 with respect to the *reporting fund*, provide the following information regarding the collateral and other credit support that the counterparty has posted to the *reporting fund*.

(For purposes of this question, include as collateral any assets purchased in connection with a repo *and any collateral that the counterparty has posted to the* reporting fund *under an arrangement pursuant to which the* reporting fund *has loaned securities to the counterparty.)*

(If you do not separate collateral into initial margin/independent amount and variation margin amounts or a trade does not require posting of variation margin, then include all of the collateral in initial margin/independent amount.)

(a) Counterparty [1, 2, 3, 4, 5]:

(i) value of collateral posted in the form of *cash and cash equivalents*:	
(x) as initial margin/independent amounts	
(y) as variation margin	
(ii) value of collateral posted in the form of securities (other than *cash and cash equivalent* instruments):	
(x) as initial margin/independent amounts	
(y) as variation margin	
(iii) value of other collateral posted:	
(x) as initial margin/independent amounts	
(y) as variation margin	
(iv) face amount of letters of credit (or other similar third party credit support) posted	
(v) percentage of initial margin/independent amounts that:	
(x) may be rehypothecated	
(y) the *reporting fund* has rehypothecated	
(vi) percentage of variation margin that:	
(x) may be rehypothecated	
(y) the *reporting fund* has rehypothecated	

Form PF Section 2b	**Information about *qualifying hedge funds* that you advise** (to be completed by *large private fund advisers* only)	Page 25 of 44

33. For each of the top five trading counterparties listed in your response to Question 20 with respect to the *reporting fund*, provide the following information regarding the collateral and other credit support that the *reporting fund* has posted to the counterparty.

(For purposes of this question, include as collateral any assets sold in connection with a reverse repo *and any collateral that the* reporting fund *has posted to the counterparty under an arrangement pursuant to which the counterparty has loaned securities to the* reporting fund.)

(If you do not separate collateral into initial margin/independent amount and variation margin amounts or a trade does not require posting of variation margin, then include all of the collateral in initial margin/independent amount.)

(a) Counterparty [1, 2, 3, 4, 5]:

(i)	value of collateral posted in the form of *cash and cash equivalents*:	
	(x) as initial margin/independent amounts	
	(y) as variation margin	
(ii)	value of collateral posted in the form of securities (other than *cash and cash equivalent* instruments):	
	(x) as initial margin/independent amounts	
	(y) as variation margin	
(iii)	value of other collateral posted:	
	(x) as initial margin/independent amounts	
	(y) as variation margin	
(iv)	face amount of letters of credit (or other similar third party credit support) posted	
(v)	percentage of initial margin/independent amounts that may be rehypothecated	
(vi)	percentage of variation margin that may be rehypothecated	

34. Identify the three *CCPs* to which the *reporting fund* has the greatest net counterparty credit exposure, measured as a percentage of the *reporting fund's net asset value*.

(Margin held at a CCP *typically represents the net counterparty credit exposure to the* CCP. *Where margin is held in a customer omnibus account at a* CCP *this should be considered exposure to the* CCP *rather than a trading counterparty. Any margin that a prime broker posts to a* CCP *on the* reporting fund's *behalf should be treated as margin posted by the* reporting fund *to the* CCP.*)*

	Name of *CCP*	**Exposure (% of *NAV*)**
(a)	[Drop-down list of CCP names] ☐ Other: _____	
(b)	[Repeat drop-down list of CCP names]	

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☐ Other: _____

(c) [Repeat drop-down list of CCP names]
☐ Other: _____

Item C. *Reporting fund* risk metrics

35. (a) During the *reporting period*, did you regularly calculate the *VaR* of the *reporting fund*?
(Please respond without regard to whether you reported the result of this calculation internally or to investors.)
☐ Yes ☐ No

(b) If you responded "yes" to Question 35 (a), provide the following information.
(If you regularly calculate the VaR *of the* reporting fund *using multiple combinations of confidence interval, horizon and historical observation period, complete a separate response to this Question 35(b) for each such combination.)*

(i) Confidence interval used (e.g., 1 – alpha) .....

(ii) Time horizon used (in number of days).....

(iii) What weighting method was used to calculate *VaR*?
☐ None ☐ Equal ☐ Geometric ☐ Other: _____

(iv) If you responded "geometric" to Question 35(b)(iii), provide the weighting factor used.

(v) What method was used to calculate *VaR*?
☐ Historical simulation ☐ Monte Carlo simulation
☐ Parametric ☐ Other: _____

(vi) Historical lookback period used, if applicable (in number of years).....

(vii) *VaR* for the 1st month of the *reporting period* (as a % of *NAV*) .....

(viii) *VaR* for the 2nd month of the *reporting period* (as a % of *NAV*).....

(ix) *VaR* for the 3rd month of the *reporting period* (as a % of *NAV*).....

36. For each of the market factors identified below, determine the effect of the specified changes on the *reporting fund's* portfolio and provide the results.
(You may omit a response to any market factor that you do not regularly consider (whether in formal testing or otherwise) in the reporting fund's *risk management. If you omit any market factor, check the box in the first column indicating that this market factor is not relevant to the* reporting fund's *portfolio.)*
(For each market factor, separate the effect on your portfolio into long and short components where (i) the long component represents the aggregate result of all positions with a positive change in valuation under a given stress scenario and (ii) the short component represents the aggregate result of all positions with a negative change in valuation under a given stress

scenario.)

(Please note the following regarding the market factors identified below:

(i) A change in "equity prices" means that the prices of all equities move up or down by the specified amount, without regard to whether the equities are listed on any exchange or included in any index;

(ii) "Risk free interest rates" means rates of interest accruing on sovereign bonds *issued by governments having the highest credit quality, such as* U.S. treasury bonds*;*

(iii) A change in "credit spreads" means that all spreads against risk free interest rates change by the specified amount;

(iv) A change in "currency rates" means that the values of all currencies move up or down by the specified amount relative to the reporting fund's *base currency;*

(v) A change in "commodity prices" means that the prices of all physical commodities move up or down by the specified amount;

(vi) A change in "option implied volatilities" means that the implied volatilities of all the options that the reporting fund *holds increase or decrease by the specified number of percentage points; and*

(vii) A change in "default rates" means that the rate at which debtors default on all instruments of the specified type increases or decreases by the specified number of percentage points.)

Not relevant	Market factor – changes in market factor	Effect on long component of portfolio (as % of *NAV*)	Effect on short component of portfolio (as % of *NAV*)
☐	Equity prices:		
	Equity prices increase 5%		
	Equity prices decrease 5%		
	Equity prices increase 25%		
	Equity prices decrease 25%		
☐	Risk free interest rates:		
	Risk free interest rates increase 10*bp*		
	Risk free interest rates decrease 10*bp*		
	Risk free interest rates increase 100*bp*		
	Risk free interest rates decrease 100*bp*		
☐	Credit spreads:		
	Credit spreads increase 10*bp*		
	Credit spreads decrease 10*bp*		
	Credit spreads increase 300*bp*		

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	Credit spreads decrease 300*bp*		
☐	Currency rates:		
	Currency rates increase 5%		
	Currency rates decrease 5%		
	Currency rates increase 25%		
	Currency rates decrease 25%		
☐	Commodity prices:		
	Commodity prices increase 10%		
	Commodity prices decrease 10%		
	Commodity prices increase 50%		
	Commodity prices decrease 50%		
☐	Option implied volatilities:		
	Implied volatilities increase 2 percentage points		
	Implied volatilities decrease 2 percentage points		
	Implied volatilities increase 10 percentage points		
	Implied volatilities decrease 10 percentage points		
☐	Default rates (*ABS*):		
	Default rates increase 1 percentage point		
	Default rates decrease 1 percentage point		
	Default rates increase 5 percentage points		
	Default rates decrease 5 percentage points		
☐	Default rates (*corporate bonds*):		
	Default rates increase 1 percentage point		
	Default rates decrease 1 percentage point		
	Default rates increase 5 percentage points		
	Default rates decrease 5 percentage points		

Item D. Financing information

37. For each month of the *reporting period*, provide the following information regarding the value of the *reporting fund's borrowings*, the types of creditors and the collateral posted to secure its *borrowings*.

(For each type of borrowing*, information is requested regarding the percentage borrowed from specified types of creditors. In each case, the total percentages allocated among these types of*

creditors should add up to 100%.)

		1st Month	2nd Month	3rd Month
(a)	Dollar amount of *unsecured borrowing*			
	(i) Percentage borrowed from *U.S. financial institutions*			
	(ii) Percentage borrowed from *non-U.S. financial institutions*			
	(iii) Percentage borrowed from creditors that are not *financial institutions*			
(b)	*Secured borrowing.* *(Classify* secured borrowing *according to the legal agreement governing the borrowing (e.g., Global Master Repurchase Agreement for* reverse repo *and Prime Brokerage Agreement for prime brokerage). Please note that for* reverse repo borrowings, *the amount should be the net amount of cash borrowed (after taking into account any initial margin/independent amount, 'haircut' and repayments). Positions under a Global Master Repurchase Agreement should not be netted.)*			
	(i) Dollar amount via prime brokerage			
	(A) value of collateral posted in the form of *cash and cash equivalents*			
	(B) value of collateral posted in the form of securities (other than *cash and cash equivalent* instruments).			
	(C) value of other collateral posted			
	(D) face amount of letters of credit (or other similar third party credit support) posted			
	(E) percentage of posted collateral that may be rehypothecated			
	(F) percentage borrowed from *U.S. financial institutions*			
	(G) percentage borrowed from *non-U.S. financial institutions*			
	(H) percentage borrowed from creditors that are not *financial institutions*			
	(ii) Dollar amount via *reverse repo (for purposes of items (A) through (E) below, include as collateral any assets sold in connection with the* reverse repo *as well as any variation margin)*			
	(A) value of collateral posted in the form of *cash and cash equivalents*		-	
	(B) value of collateral posted in the form of securities (other than *cash and cash equivalent* instruments).			

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(C) value of other collateral posted			
(D) face amount of letters of credit (or other similar third party credit support) posted			
(E) percentage of posted collateral that may be rehypothecated			
(F) percentage borrowed from *U.S. financial institutions*			
(G) percentage borrowed from *non-U.S. financial institutions*			
(H) percentage borrowed from creditors that are not *financial institutions*			
(iii) Dollar amount of other *secured borrowings*			
(A) value of collateral posted in the form of *cash and cash equivalents*			
(B) value of collateral posted in the form of securities (other than *cash and cash equivalent* instruments).			
(C) value of other collateral posted			
(D) face amount of letters of credit (or other similar third party credit support) posted			
(E) percentage of posted collateral that may be rehypothecated			
(F) percentage borrowed from *U.S. financial institutions*			
(G) percentage borrowed from *non-U.S. financial institutions*			
(H) percentage borrowed from creditors that are not *financial institutions*			

38. For each month of the *reporting period*, provide the following information regarding the value of the *reporting fund's* derivative positions and the collateral posted to secure those positions.

(The value of any derivative should be its total gross *notional value, except that the value of an option should be its delta adjusted notional value. Do not net long and short positions.)*

(For items regarding collateral postings, if you do not separate collateral into initial margin/independent amount and variation margin amounts or a trade does not require posting of variation margin, then include all of the collateral in initial margin/independent amount.)

	1st Month	**2nd Month**	**3rd Month**
Aggregate value of all derivative positions of the *reporting fund*			
(a) value of collateral posted in the form of *cash and cash*			

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equivalents:

(i) as initial margin/independent amounts			
(ii) as variation margin			

(b) *value* of collateral posted in the form of securities (other than *cash and cash equivalent* instruments):

(i) as initial margin/independent amounts			
(ii) as variation margin			

(c) value of other collateral posted:

(i) as initial margin/independent amounts			
(ii) as variation margin			
(d) face amount of letters of credit (or other similar third party credit support) posted			
(e) percentage of initial margin/independent amounts that may be rehypothecated			
(f) percentage of variation margin that may be rehypothecated			

39. Financing liquidity:

(a) Provide the aggregate dollar amount of *borrowing* by and cash financing available to the *reporting fund* (including all drawn and undrawn, committed and uncommitted lines of credit as well as any term financing)

(b) Divide the amount reported in response to Question 39(a) among the periods specified below depending on the longest period for which the creditor is contractually committed to provide such financing.

(If a creditor (or syndicate or administrative/collateral agent) is permitted to vary unilaterally the economic terms of the financing or to revalue posted collateral in its own discretion and demand additional collateral, then the financing should be deemed uncommitted for purposes of this question. Uncommitted financing should be included under "1 day or less.")

(The total should add up to 100%.)

	% of total financing
1 day or less	
2 days – 7 days	
8 days – 30 days	
31 days – 90 days	
91 days – 180 days	
181 days – 364 days	
365 days or longer	

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Item E. Investor information

40. Provide the following information regarding the *reporting fund's* use of side-pockets and restrictions on investor withdrawals and redemptions.

(For Questions 40 and 41, please note that the standards for imposing suspensions and restrictions on withdrawals/redemptions may vary among funds. Make a good faith determination of the provisions that would likely be triggered during conditions that you view as significant market stress.)

As of the *data reporting date*, what percentage of the *reporting fund's net asset value*, if any:

(a)	Is subject to a "side-pocket" arrangement	
(b)	May be subjected to a suspension of investor withdrawals/redemptions by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to suspend and not just whether a suspension is currently effective)*	
(c)	May be subjected to material restrictions on investor withdrawals/ redemptions (e.g., "gates") by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to impose a restriction and not just whether a restriction has been imposed)*	
(d)	Is subject to a suspension of investor withdrawals/redemptions *(this question relates to whether a suspension is currently effective and not just an adviser's or governing body's right to suspend)*	
(e)	Is subject to a material restriction on investor withdrawals/redemptions (e.g., a "gate") *(this question relates to whether a restriction has been imposed and not just an adviser's or governing body's right to impose a restriction)*	

41. Investor liquidity (as a % of *net asset value*):

(Divide the reporting fund's net asset value *among the periods specified below depending on the shortest period within which invested funds could be withdrawn or investors could receive redemption payments, as applicable. Assume that you would impose gates where applicable but that you would not completely suspend withdrawals/redemptions and that there are no redemption fees. Please base on the valuation date rather than the date paid to investor.)*

(The total should add up to 100%.)

	% of *NAV* locked for
1 day or less	
2 days – 7 days	
8 days – 30 days	
31 days – 90 days	

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91 days – 180 days	
181 days – 364 days	
365 days or longer	

Form PF Section 3	**Information about *liquidity funds* that you advise** (to be completed by *large private fund advisers* only)	Page 34 of 44

Section 3: Information about *liquidity funds* that you advise.

You must complete a separate Section 3 for each *liquidity fund* that you advise. You must aggregate information regarding *liquidity funds* as provided in the General Instructions.

Item A. *Reporting fund* identifying and operational information

42. (a) Name of the *reporting fund*.....

    (b) *Private fund* identification number of the *reporting fund*.....

43. Does the *reporting fund* use the amortized cost method of valuation in computing its *net asset value*?

    ☐ Yes ☐ No

44. Does the *reporting fund* use the penny rounding method of pricing in computing its *net asset value*?

    ☐ Yes ☐ No

45. (a) Does the *reporting fund* have a policy of complying with the *risk limiting conditions* of *rule 2a-7*?

    ☐ Yes ☐ No

    (b) If you responded "no" to Question 45(a) above, does the *reporting fund* have a policy of complying with the following provisions of *rule 2a-7*:

    (i) the diversification conditions? ☐ Yes ☐ No

    (ii) the credit quality conditions? ☐ Yes ☐ No

    (iii) the liquidity conditions? ☐ Yes ☐ No

    (iv) the maturity conditions? ☐ Yes ☐ No

Item B. *Reporting fund* assets

46. Provide the following information for each month of the *reporting period*.

		1st Month	2nd Month	3rd Month
(a)	*Net asset value* of *reporting fund*.....			
(b)	*Net asset value* per share of *reporting fund*.....			
(c)	*Market-based net asset value per share* of *reporting fund*.....			
(d)	*WAM* of *reporting fund*.....			
(e)	*WAL* of *reporting fund*.....			
(f)	*7-day gross yield* of *reporting fund*.....			
(g)	Dollar amount of the *reporting fund's* assets that are *daily*			

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liquid assets			
(h) Dollar amount of the *reporting fund's* assets that are *weekly liquid assets*			
(i) Dollar amount of the *reporting fund's* assets that have a *maturity* greater than 397 days			

47. Selected product exposures by *maturity* for *liquidity fund assets under management.*

(Give the gross dollar value of the reporting fund's *positions as of the* data reporting date *in each of the following asset classes, divided by* maturity. *Include all exposure whether held physically, synthetically or through derivatives. The value of any derivative should be its* total gross *notional value, except that the value of an option should be its delta adjusted notional value. Include any closed out and* OTC *forward positions that have not yet expired/matured. Do not net positions within asset classes. Assets held in side-pockets should be included as assets of the* reporting fund.*)*

(Each asset should only be included in a single asset class.)

	Maturity				
	1 day or less	**2 days to 7 days**	**8 days to 30 days**	**31 days to 397 days**	**Greater than 397 days**
***Sovereign bonds* and municipal bonds**					
U.S. treasury securities					
Agency securities					
GSE bonds					
Sovereign bonds issued by *G10* countries other than the U.S.					
Other *sovereign bonds* (including supranational bonds)					
U.S. state and local bonds					
Instruments issued by *U.S. financial institutions*					
Unsecured commercial paper					
ABCP					
ABS and *structured products* other than *ABCP*					
Certificates of deposit					
Floating rate notes					
Repos					
Where assets purchased are *U.S. treasury securities* or *agency securities*					
Where assets purchased are *corporate bonds* that are *investment grade*					
Where other assets are purchased					

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Instruments issued by companies organized in the U.S. (other than *U.S. financial institutions*)

Unsecured commercial paper					
Corporate bonds (other than unsecured commercial paper), loans, *ABS*, *structured products* and *repos*, combined					

Instruments issued by *non-U.S. financial institutions*

Unsecured commercial paper					
ABCP					
ABS and *structured products* other than *ABCP*					
Certificates of deposit					
Floating rate notes					
Repos					
Where assets purchased are *U.S. treasury securities* or *agency securities*					
Where assets purchased are *corporate bonds* that are *investment grade*					
Where other assets are purchased					

Instruments issued by companies organized outside the U.S. (other than *non-U.S. financial institutions*)

Unsecured commercial paper					
Corporate bonds (other than unsecured commercial paper), loans, *ABS*, *structured products* and *repos*, combined					

Other instruments

Investments in *money market funds*					
Investments in *liquidity funds*					
Cash and cash equivalents (other than instruments covered by another category above)					

48. For each open position of the *reporting fund* that represents 5% or more of the *reporting fund's net asset value*, provide the information requested below.

(This question relates to investment portfolio concentration. For purposes of this question, two or more positions in securities (or derivatives based on securities) of a single issuer should be treated as a single position and the sub-asset class *specified should be the* sub-asset class *of the security accounting for the greatest proportion of the aggregate position.*

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Do not net long and short positions. Exclude cash and cash equivalent *instruments.)*

		% of *net asset value*	***Sub-asset class***
(a)	First month of the *reporting period*		
	(i) Position		[drop-down of asset classes]
	(ii) Position		[drop-down of asset classes]
(b)	Second month of the *reporting period*		
	(i) Position		[drop-down of asset classes]
	(ii) Position		[drop-down of asset classes]
(c)	Third month of the *reporting period*		
	(i) Position		[drop-down of asset classes]
	(ii) Position		[drop-down of asset classes]

Item C. Financing information

49. (a) Is the amount of total *borrowing* reported in response to Question 9 equal to or greater than 5% of the *reporting fund's net asset value*?

☐ Yes ☐ No

(b) If you responded "yes" to Question 49(a) above, divide the dollar amount of total *borrowing* reported in response to Question 9 among the periods specified below depending on the type of *borrowing*, the type of creditor and the latest date on which the reporting fund may repay the principal amount of the borrowing without defaulting or incurring penalties or additional fees.

(If a creditor (or syndicate or administrative/collateral agent) is permitted to vary unilaterally the economic terms of the financing or to revalue posted collateral in its own discretion and demand additional collateral, then the borrowing *should be deemed to have a maturity of 1 day or less for purposes of this question. For amortizing loans, each amortization payment should be treated separately and grouped with other* borrowings *based on its payment date.)*

(The total amount of borrowings *reported below should equal the total amount of* borrowing *reported in response to Question 9.)*

	1 day or less	**2 days to 7 days**	**8 days to 30 days**	**31 days to 397 days**	**Greater than 397 days**
Unsecured borrowing					
U.S. financial institutions					
Non-U.S. financial institutions					
Other creditors					
Secured borrowing					
U.S. financial institutions					

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Non-U.S. financial institutions						
Other creditors						

50. (a) Does the *reporting fund* have in place one or more committed liquidity facilities?
☐ Yes ☐ No

(b) If you responded "yes" to Question 50(a), provide the aggregate dollar amount of commitments under the liquidity facilities

Item D. Investor information

51. Specify the number of outstanding shares or units of the *reporting fund's* stock or similar securities

52. Provide the following information regarding investor concentration.

(For purposes of this question, if you know that two or more beneficial owners of the reporting fund *are* affiliated *with each other, you should treat them as a single* beneficial owner. *Also, if you are aggregating any* parallel managed accounts *with the* reporting fund *in accordance with the General Instructions, you should treat the account owners as beneficial owners of the* reporting fund.*)*

(a) Specify the percentage of the *reporting fund's* equity that is beneficially owned by the beneficial owner having the largest equity interest in the *reporting fund*

(b) How many investors beneficially own 5% or more of the *reporting fund's* equity?

53. Provide a good faith estimate, as of the *data reporting date*, of the percentage of the *reporting fund's* outstanding equity that was purchased using *securities lending collateral*

54. Provide the following information regarding the restrictions on withdrawals and redemptions by investors in the *reporting fund*.

(For Questions 54 and 55, please note that the standards for imposing suspensions and restrictions on withdrawals/redemptions may vary among funds. Make a good faith determination of the provisions that would likely be triggered during conditions that you view as significant market stress.)

As of the *data reporting date*, what percentage of the *reporting fund's net asset value*, if any:

(a) May be subjected to a suspension of investor withdrawals/redemptions by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to suspend and not just whether a suspension is currently effective)*

(b) May be subjected to material restrictions on investor withdrawals/redemptions (e.g., "gates") by an adviser or fund governing body *(this question relates to an adviser's or governing body's right to*

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impose a restriction and not just whether a restriction has been imposed) .	
(c) Is subject to a suspension of investor withdrawals/redemptions *(this question relates to whether a suspension is currently effective and not just an adviser's or governing body's right to suspend)*	
(d) Is subject to a material restriction on investor withdrawals/redemptions (e.g., a "gate") *(this question relates to whether a restriction has been imposed and not just an adviser's or governing body's right to impose a restriction)*	

55. Investor liquidity (as a % of *net asset value*):

(Divide the reporting fund's net asset value *among the periods specified below depending on the shortest period within which invested funds could be withdrawn or investors could receive redemption payments, as applicable. Assume that you would impose gates where applicable but that you would not completely suspend withdrawals/redemptions and that there are no redemption fees. Please base on the valuation date rather than the date paid to investor. The total should add up to 100%.)*

	% of *NAV* locked for
1 day or less	
2 days – 7 days	
8 days – 30 days	
31 days – 90 days	
91 days – 180 days	
181 days – 364 days	
365 days or longer	

Form PF **Section 4**	**Information about *private equity funds* that you advise** (to be completed by *large private fund advisers* only)	Page 40 of 44

Section 4: Information about *private equity funds* that you advise.

You must complete a separate Section 4 for each *private equity fund* that you advise. You must aggregate information regarding *private equity funds* as provided in the General Instructions.

Item A. *Reporting fund* identifying information

56. (a) Name of the *reporting fund* .....

(b) *Private fund* identification number of the *reporting fund* .....

Item B. *Reporting fund* financing and investments

57. (a) Does the *reporting fund* have in place one or more loan or other borrowing facilities?

☐ Yes ☐ No

If you responded "yes" to Question 57(a) above, provide the total outstanding balance for all such facilities:

(b) As a dollar value.....

(c) As a percentage of the *reporting fund's unfunded commitments* .....

58. (a) Does the *reporting fund* guarantee the obligations of any portfolio company in which the *reporting fund* invests?

☐ Yes ☐ No

If you responded "yes" to Question 58(a) above, report the total value of all such guarantee obligations of the *reporting fund*:

(b) As a dollar value.....

(c) As a percentage of the *reporting fund's unfunded commitments* .....

59. What is the weighted average debt-to-equity ratio of the *controlled portfolio companies* in which the *reporting fund* invests?

(Weighting should be based on gross assets of each controlled portfolio company *as a percentage of the aggregate gross assets of the* reporting fund's controlled portfolio companies.*)*

60. What is the highest debt-to-equity ratio of any *controlled portfolio company* in which the reporting fund invests?

61. What is the lowest debt-to-equity ratio of any *controlled portfolio company* in which the reporting fund invests?

62. Provide a breakdown of the indebtedness of the *reporting fund's controlled portfolio companies* by maturity.

(For amortizing debt, each amortization payment should be treated separately and grouped with other debt based on its payment date.)

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Maturity	Principal amount
6 months or less following the *data reporting date*	
More than 6 months but less than or equal to 1 year following the *data reporting date*	
More than 1 year but less than or equal to 2 years following the *data reporting date*	
More than 2 years but less than or equal to 3 years following the *data reporting date*	
More than 3 years following the *data reporting date*	

63. What percentage of the aggregate indebtedness of the *reporting fund's controlled portfolio companies* is payment-in-kind (PIK) or zero-coupon debt?

64. During the *reporting period*, did the *reporting fund* or any of its portfolio companies experience an event of default under any of its indentures, loan agreements or other instruments evidencing obligations for borrowed money?

☐ Yes ☐ No

65. (a) Does any *controlled portfolio company* of the *reporting fund* have in place one or more bridge loans or commitments (subject to customary conditions) for a bridge loan?

☐ Yes ☐ No

(b) If you responded "yes" to Question 65(a), identify each *person* that has provided all or part of any bridge loan or commitment to the relevant *controlled portfolio company*. For each such *person*, provide the applicable outstanding amount or commitment amount.

Name	Outstanding amount of financing, if drawn	Amount of commitment, if undrawn
[repeat drop-down list of creditor/counterparty names] Other: _____		
[repeat drop-down list of creditor/counterparty names] Other: _____		
[repeat drop-down list of creditor/counterparty names] Other: _____		

66. (a) Does the *reporting fund* invest in any *financial industry portfolio companies*?

☐ Yes ☐ No

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(b) If you responded "yes" to Question 66(a), then for each *financial industry portfolio company* in which the *reporting fund* invests, provide the following information.

Legal Name	**Address of principal office (include city, state and country)**	***NAICS code***	***LEI*, if any**	**Debt-to-equity ratio of portfolio company**	**% of *reporting fund's* gross assets invested in this portfolio company**	**% of portfolio company beneficially owned by the *reporting fund***

67. Provide a breakdown of the *reporting fund's* investments by industry, based on the *NAICS codes* of its portfolio companies.

(The total should add up to 100%.)

NAICS code	**% of *reporting fund's* gross assets invested in this industry**

68. Provide a geographical breakdown of the *reporting fund's* investments by percentage of gross asset value.

(Except for foreign exchange derivatives*, investments should be allocated by the jurisdiction of organization of the issuer or counterparty, as applicable. In the case of* foreign exchange derivatives*, investments should be allocated by the country to whose currency the* reporting fund *has exposure through the derivative. The total should add up to 100%.)*

(The value of any derivative should be its total gross *notional value, except that the value of an option should be its delta adjusted notional value. Do not net long and short positions.)*

Region	**%**
Americas	
(a) Brazil	
(b) Canada	
(c) Mexico	

Form PF Section 4	Information about *private equity funds* that you advise (to be completed by *large private fund advisers* only)	Page 43 of 44

(d) United States	
(e) Other Americas	
Europe	
(f) *EEA*	
(g) Russia	
(h) Other Europe	
Asia and Pacific	
(i) Australia	
(j) China (including Hong Kong)	
(k) India	
(l) Japan	
(m) Korea, Republic of	
(n) Middle East	
(o) Other Asia and Pacific	
Africa	
(p) South Africa	
(q) Other Africa	

69. If you or any of your *related persons* invest in any companies that are portfolio companies of the *reporting fund*, provide the aggregate dollar amount of these investments.

Form PF **Section 5**	**Request for temporary hardship exemption** (to be completed by *private fund advisers* requesting exemption)	Page 44 of 44

Section 5: Request for temporary hardship exemption.

You must complete Section 5 if you are requesting a temporary hardship exemption pursuant to *SEC* rule 204(b)-1(f).

A. For which type of Form PF filing are you requesting a temporary hardship exemption?

1. If you are not a *large private fund adviser*:
   - ☐ Initial filing
   - ☐ *Annual update*
   - ☐ Final filing
2. If you are a *large private fund adviser*:
   - ☐ Initial filing
   - ☐ *Quarterly update*
   - ☐ Filing to transition to annual reporting
   - ☐ Final filing

B. Provide the following information regarding your request for a temporary hardship exemption (attach a separate page if additional space is needed).

1. Describe the nature and extent of the temporary technical difficulties when you attempt to submit the filing to the [Form PF filing system]:

2. Describe the extent to which you previously have submitted documents in electronic format with the same hardware and software that you are unable to use to submit this filing:

3. Describe the burden and expense of employing alternative means (e.g., a service provider) to submit the filing in electronic format in a timely manner:

4. Provide any other reasons that a temporary hardship exemption is warranted:

GLOSSARY OF TERMS

A. General terms

Advisers Act	U.S. Investment Advisers Act of 1940, as amended.
Affiliate	With respect to any *person*, any other *person* that directly or indirectly *controls*, is *controlled* by or is under common *control* with such person. The term *affiliated* means that two or more *persons* are *affiliates*.
Annual update	An update of this Form PF with respect to any fiscal year.
Borrowings	*Secured borrowings* and *unsecured borrowings*, collectively.
bp	Basis points.
Cash and cash equivalents	Cash (including U.S. and non-U.S. currencies), cash equivalents and government securities. For purposes of this definition: • cash equivalents are: (i) bank deposits, certificates of deposit, bankers acceptances and similar bank instruments held for investment purposes; (ii) the net cash surrender value of an insurance policy; and (iii) investments in *money market funds*; and • government securities are: (i) *U.S. treasury securities*; (ii) *agency securities*; and (iii) any certificate of deposit for any of the foregoing.
CCP	Central clearing counterparties (or central clearing houses), such as CC&G, CME Clearing, The Depository Trust & Clearing Corporation (including FICC, NSCC and Euro CCP), EMCF, Eurex Clearing, Fedwire, ICE Clear Europe, ICE Clear U.S., ICE Trust, LCH Clearnet Limited, LCH Clearnet SA, Options Clearing Corporation and SIX x-clear.
CEA	U.S. Commodity Exchange Act, as amended.
CFTC	U.S. Commodity Futures Trading Commission.
Combined money market and liquidity fund assets under management	With respect to any adviser, the sum of: (i) such adviser's *liquidity fund assets under management*; and (ii) such adviser's *regulatory assets under management* that are attributable to *money market funds* that it advises.
Committed capital	Any commitment pursuant to which a *person* is obligated to acquire an interest in, or make capital contributions to, the *private fund*.
Commodity pool	A "commodity pool," as defined in section 1a(10) of the CEA.
Control	Has the meaning provided in *Form ADV*. The term *controlled* has a corresponding meaning.
Controlled portfolio company	With respect to any *private equity fund*, a portfolio company that is *controlled* by the *private equity fund*, either alone or together with the *private equity fund's affiliates* or other *persons* that are part of a club or consortium including the *private equity fund*.
CPO	A "commodity pool operator," as defined in section 1a(11) of the CEA.
CTA	A "commodity trading advisor," as defined in section 1a(12) of the CEA.

Daily liquid assets	Has the meaning provided in *rule 2a-7*.
Data reporting date	In the case of an initial filing, the *data reporting date* is the last calendar day of your most recently completed fiscal year (or, if you are a *large private fund adviser*, the most recently completed calendar quarter). In the case of an *annual update*, the *data reporting date* is the last calendar day of your most recently completed fiscal year. In the case of a *quarterly update*, the *data reporting date* is the last calendar day of the most recently completed calendar quarter.
Duration	The weighted average maturity of a portfolio comprised of the specified fixed income assets, where the weights are the relative discounted cash flows in each period.
EEA	The European Economic Area. As of the effective date of this Form PF, the *EEA* is comprised of: (i) the European Union member states, which are Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom; and (ii) Iceland, Liechtenstein and Norway.
Feeder fund	See *master-feeder arrangement*.
Financial industry portfolio company	Any of the following: (i) a nonbank financial company, as defined in the Financial Stability Act of 2010; or (ii) a *financial institution*.
Financial institution	Any of the following: (i) a bank or savings association, in each case as defined in the Federal Deposit Insurance Act; (ii) a bank holding company or financial holding company, in each case as defined in the Bank Holding Company Act of 1956; (iii) a savings and loan holding company, as defined in the Home Owners' Loan Act; (iv) a Federal credit union, State credit union or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act; (v) a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971; or (vi) an entity chartered or otherwise organized outside the United States that engages in banking activities.
Firm	The *private fund adviser* completing or amending this Form PF.
Form ADV	Form ADV, as promulgated and amended by the *SEC*.
Form ADV Section 7.B.1	Section 7.B.1 of Schedule D to *Form ADV*.
G10	The Group of Ten. As of the effective date of this Form PF, the *G10* is comprised of: Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States.
Gross asset value	Value of gross assets, calculated in accordance with Part 1A, Instruction 6.e(3) of *Form ADV*, provided that, for all purposes under this Form PF, assets held in *parallel managed accounts* should be treated as assets of the *private funds* with which they are aggregated (see Instruction 5 of Form PF).
Hedge fund	Any *private fund* that: (a) has a performance fee or allocation calculated by taking into account

	unrealized gains; (b) may borrow an amount in excess of one-half of its *net asset value* (including any *committed capital*) or may have gross notional exposure in excess of twice its *net asset value* (including any *committed capital*); or (c) may sell securities or other assets short. Solely for purposes of this Form PF, a *commodity pool* satisfying the definition of "*private fund*" is categorized as a *hedge fund*. For purposes of this definition, do not net long and short positions. Include any borrowings or notional exposure of another person that are guaranteed by the *private fund* or that the *private fund* may otherwise be obligated to satisfy.
Hedge fund assets under management	With respect to any adviser, *hedge fund assets under management* are the portion of such adviser's *regulatory assets under management* that are attributable to *hedge funds* that it advises.
Investment grade	A security is *investment grade* if it is sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time and is subject to no greater than moderate credit risk.
Large private fund adviser	Any *private fund adviser* that is required to file Section 2a, 3 or 4 of Form PF. See Instruction 3 to determine whether you are required to file one or more of these sections.
LEI	With respect to any company, the "legal entity identifier" assigned by or on behalf of an internationally recognized standards setting body and required for reporting purposes by the U.S. Department of the Treasury's Office of Financial Research or a financial regulator. In the case of a *financial institution*, if a "legal entity identifier" has not been assigned, then provide the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.
Liquidity fund	Any *private fund* that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable *net asset value* per unit or minimize principal volatility for investors.
Liquidity fund assets under management	With respect to any adviser, *liquidity fund assets under management* are the portion of such adviser's *regulatory assets under management* that are attributable to *liquidity funds* it advises (including *liquidity funds* that are also *hedge funds*).
LMV	Total market value of long positions, measured as specified in the instructions to this Form PF.
Market-based net asset value per share	*Net asset value* per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions), to the nearest hundredth of a cent. Exclude the value of any capital support agreement or similar arrangement.
Master fund	See *master-feeder arrangement*.
Master-feeder arrangement	An arrangement in which one or more funds ("*feeder funds*") invest all or substantially all of their assets in a single *private fund* ("*master fund*"). A fund would also be a *feeder fund* investing in a *master fund* for purposes of this definition if it issued multiple classes (or series) of shares or interests and each

	class (or series) invests substantially all of its assets in a single *master fund*.
Maturity	The maturity of the relevant asset, taking into account the maturity shortening provisions contained in paragraph (d) of *rule 2a-7*.
Money market fund	Has the meaning provided in *rule 2a-7*.
NAICS code	With respect to any company, the six-digit North American Industry Classification System code that best describes the company's primary business activity and principal source of revenue.
Net assets under management	*Net assets under management* are your *regulatory assets under management* minus any outstanding indebtedness or other accrued but unpaid liabilities.
Net asset value or *NAV*	With respect to any *reporting fund*, the gross assets reported in response to Question 7 minus any outstanding indebtedness or other accrued but unpaid liabilities.
NFA	The National Futures Association.
Non-investment grade	A security is *non-investment grade* if it is not an *investment grade* security.
Non-U.S. financial institution	Any of the following *financial institutions*: (i) a *financial institution* chartered outside the United States; (ii) a subsidiary of a *U.S. financial institution* that is separately incorporated or otherwise organized outside the United States; or (iii) a branch or agency that resides in the United States but has a parent that is a *financial institution* chartered outside the United States.
OTC	With respect to any instrument, the trading of that instrument over the counter.
Other private fund	Any *private fund* that is not a *hedge fund, liquidity fund, private equity fund, real estate fund, securitized asset fund* or *venture capital fund*.
Parallel fund	See *parallel fund structure*.
Parallel fund structure	A structure in which one or more *private funds* (each, a "*parallel fund*") pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as another *private fund*.
Parallel managed account	With respect to any *private fund*, a *parallel managed account* is any managed account or other pool of assets that you advise and that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified *private fund*.
Person	Has the meaning provided in *Form ADV*.
Principal office and place of business	Has the meaning provided in *Form ADV*.
Private equity fund	Any *private fund* that is not a *hedge fund, liquidity fund, real estate fund, securitized asset fund* or *venture capital fund* and does not provide investors with redemption rights in the ordinary course.
Private equity fund assets under management	With respect to any adviser, *private equity fund assets under management* are the portion of such adviser's *regulatory assets under management* that are attributable to *private equity funds* it advises.
Private fund	Any issuer that would be an investment company as defined in section 3 of the

	Investment Company Act of 1940 but for sections 3(c)(1) or 3(c)(7) of that Act. If any *private fund* has issued two or more series (or classes) of equity interests whose values are determined with respect to separate portfolios of securities and other assets, then each such series (or class) should be regarded as a separate *private fund*. This only applies with respect to series (or classes) that you manage as if they were separate funds and not a fund's side pockets or similar arrangements.
Private fund adviser	Any investment adviser that (i) is registered or required to register with the *SEC* (including any investment adviser that is also registered or required to register with the *CFTC* as a *CPO* or *CTA*) and (ii) advises one or more *private funds*.
Qualifying hedge fund	Any *hedge fund* that has a *net asset value* individually, or in combination with any *parallel funds* and/or *parallel managed accounts*, of at least $500 million as of the close of business on any day during the most recently completed calendar quarter.
Quarterly update	An update of this Form PF with respect to any calendar quarter.
Real estate fund	Any *private fund* that is not a *hedge fund*, that does not provide investors with redemption rights in the ordinary course and that invests primarily in real estate and real estate related assets.
Regulatory assets under management	Regulatory assets under management, calculated in accordance Part 1A, Instruction 5.b of *Form ADV*, provided that, for all purposes under this Form PF, assets held in *parallel managed accounts* should be treated as assets of the *private funds* with which they are aggregated (see Instruction 5 of Form PF).
Related person	Has the meaning provided in *Form ADV*.
Reporting period	With respect to an *annual update*, the twelve month period ending on the *data reporting date*. With respect to a *quarterly update*, the three month period ending on the *data reporting date*.
Reporting fund	A *private fund* as to which you must report information on Form PF. Typically, each *private fund* is a *reporting fund*. This includes *parallel funds*, each of which is a separate *reporting fund*. However, only the *master fund* in any *master-feeder arrangement* should be identified as the *reporting fund* with respect to any such arrangement. See Instructions 3 and 5.
Risk limiting conditions	The conditions specified in paragraphs (c)(2) (maturity), (c)(3) (quality), (c)(4) (diversification), and (c)(5) (liquidity) of *rule 2a-7*.
Rule 2a-7	Rule 2a-7 promulgated by the *SEC* under the Investment Company Act of 1940.
SEC	U.S. Securities and Exchange Commission.
Secured borrowing	Obligations for borrowed money in respect of which the borrower has posted collateral or other credit support. For purposes of this definition, *reverse repos* are *secured borrowings*.
Securities lending collateral	Cash pledged to the *reporting fund's* beneficial owners as collateral in respect of securities lending arrangements.
Securitized asset fund	Any *private fund* that is not a *hedge fund* and that issues asset backed securities and whose investors are primarily debt-holders.

7-day gross yield	Based on the 7 days ended on the *data reporting date*, calculate the *liquidity fund*'s yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent. The 7-day gross yield should not reflect a deduction of shareholders fees and fund operating expenses.
SMV	Total market value of short positions, measured as specified in the instructions to this Form PF.
Sub-asset class	Each sub-asset class identified in Questions 23 and 27.
Total gross	The gross nominal or notional value of all transactions that have been entered into but not yet settled as of the *data reporting date*. For contracts with variable nominal or notional principal amounts, the basis for reporting is the nominal or notional principal amounts as of the *data reporting date*.
Turnover rate	Divide the lesser of amounts of purchases or sales of securities or other investments for the month by the average value of the securities or other investments owned by the *hedge funds* during the month. Calculate the average value by totaling the values of securities and other investments as of the beginning and as of the end of the month and dividing the sum by 2. The value of any derivative should be its *total gross* notional value, except that the value of an option should be its delta adjusted notional value. Do not net long and short positions. However, in relation to derivatives, packages such as call-spreads may be treated as a single position (rather than as a long position and a short position) Purchases include any cash paid upon the conversion of one security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights and warrants and net proceeds of securities that have been called or for which payment has been made through redemption or maturity. Include proceeds from a short sale in the value of the securities sold during the period; include the cost of covering a short sale in the value of securities purchased during the period. Include premiums paid to purchase options in the value of securities purchased during the period; include premiums received from the sale of options in the value of the securities sold during the period.
U.S. financial institution	Any of the following *financial institutions*: (i) a *financial institution* chartered in the United States (whether federally-chartered or state-chartered); (ii) a subsidiary of a *non-U.S. financial institution* that is separately incorporated or otherwise organized in the United States; or (iii) a branch or agency that resides outside the United States but has a parent that is a *financial institution* chartered in the United States.
Unencumbered cash	The fund's *cash and cash equivalents* minus the sum of the following (without duplication): (i) *cash and cash equivalents* transferred to a collateral taker pursuant to a title transfer arrangement; and (ii) *cash and cash equivalents* subject to a security interest, lien or other encumbrance (this could include *cash and cash equivalents* in an account subject to a control agreement).

Unfunded commitments	*Committed capital* that has not yet been contributed to the *private equity fund* by investors.
United States person	Has the meaning provided in rule 203(m)-1 under the Advisers Act, which includes any natural person that is resident in the United States.
Unsecured borrowing	Obligations for borrowed money in respect of which the borrower has not posted collateral or other credit support.
VaR	For a given portfolio, the loss over a target horizon that will not be exceeded at some specified confidence level.
Venture capital fund	Any *private fund* meeting the definition of venture capital fund in rule 203(l)-1 of the *Advisers Act*.
WAL	Weighted average portfolio maturity of a *liquidity fund* calculated taking into account the maturity shortening provisions contained in paragraph (d) of *rule 2a-7*, but determined without reference to the exceptions in paragraph (d) of *rule 2a-7* regarding interest rate readjustments.
WAM	Weighted average portfolio maturity of a *liquidity fund* calculated taking into account the maturity shortening provisions contained in paragraph (d) of *rule 2a-7*.
Weekly liquid assets	Has the meaning provided in *rule 2a-7*.

B. Types of securities and instruments

ABCP	Asset backed commercial paper, including (but not limited to) structured investment vehicles, single-seller conduits and multi-seller conduit programs. Provide the market value of all investments in *ABCP*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
ABS	Securities derived from the pooling and repackaging of cash flow producing financial assets.
Agency MBS	Agency mortgage-backed securities (whether residential or commercial). Provide the market value of all investments in *agency MBS*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
Agency securities	Any security issued by a *person* controlled or supervised by and acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States and guaranteed as to principal or interest by the United States. Provide the market value of all investments in *agency securities*. Include bond derivatives.
Auto ABS	*ABS* secured by automobile loans. Provide the market value of all investments in *auto ABS*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
CDO	Collateralized debt obligations (including cash flow and synthetic) other than *CLO, agency MBS, CMBS, RMBS, auto ABS* and *consumer ABS*. Provide the market value of all investments in *CDOs*, but do not include any

	positions held via *CDS* (these should be recorded in the *CDS* category).
CDS	Credit default swaps, including any *LCDS*. *LMV* should be the *total gross* notional value of protection written and *SMV* should be the *total gross* notional value of protection bought.
CLO	Collateralized loan obligations other than *CDO, agency MBS, CMBS, RMBS, auto ABS* and *consumer ABS*. Provide the market value of all investments in *CLOs*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
CMBS	Commercial mortgage backed securities, other than *agency MBS*. Provide the market value of all investments in *CMBS*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
Commodities	Has the meaning provided in the *CEA*. Include *ETFs* that hold commodities. For questions regarding *commodity* derivatives, provide the value of all exposure to *commodities* that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled).
Consumer ABS	*ABS* secured by loans to consumers other than *RMBS* and *auto ABS*. Provide the market value of all investments in *consumer ABS*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
Convertible bonds	Convertible *corporate bonds* (not yet converted into shares or cash). Provide the market value of all investments in *convertible bonds*. Include bond derivatives, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
Corporate bonds	Bonds, debentures and notes, including commercial paper, issued by corporations and other non-governmental entities. Do not include preferred equities. Provide the market value of all investments in *corporate bonds*. Include bond derivatives, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
Credit derivatives	*Single name CDS, index CDS* and *exotic CDS*.
Crude oil	For questions regarding crude oil derivatives, provide the value of all exposure to crude oil that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled).
ETF	Exchange-traded fund.
Exotic CDS	*CDS*s referencing bespoke baskets or tranches of *CDOs*, *CLOs* and other structured investment vehicles, including credit default tranches. Provide the *total gross* notional value of all investments in *Exotic CDSs*. *LMV* should be the *total gross* notional value of protection written and *SMV* should be the *total gross* notional value of protection bought.
Foreign exchange derivative	Any derivative whose underlying asset is a currency other than U.S. dollars or is an exchange rate. Cross-currency interest rate swaps should be included in *foreign exchange derivatives* and excluded from *interest rate derivatives*. Provide the *total gross* notional value of outstanding transactions (or, in the case of options, the delta adjusted notional value of outstanding transactions). Only

	one currency side of every transaction should be counted.
Gold	For questions regarding gold derivatives, provide the value of all exposure to gold that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled).
GSE bonds	Notes, bonds and debentures issued by private entities sponsored by the U.S. federal government but not guaranteed as to principal and interest by the U.S. federal government. Provide the market value of all investments in *GSE bonds*. Include bond derivatives, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
Index CDS	*CDSs* referencing a standardized basket of credit entities, including *CDS* indices and indices referencing leveraged loans. Provide the *total gross* notional value of all investments in *Index CDSs*. *LMV* should be the *total gross* notional value of protection written and *SMV* should be the *total gross* notional value of protection bought.
Interest rate derivative	Any derivative whose underlying asset is the obligation to pay or the right to receive a given amount of money accruing interest at a given rate. Cross-currency interest rate swaps should be included in *foreign exchange derivatives* and excluded from *interest rate derivatives*. Provide the *total gross* notional value of outstanding transactions (or, in the case of options, the delta adjusted notional value of outstanding transactions). This information must be presented in terms of 10-year bond-equivalents.
Investments in external private funds	Investments in *private funds* that neither you nor your *related persons* advise (other than cash management funds).
Investments in internal private funds	Investments in *private funds* that you or any of your *related persons* advise (other than cash management funds).
Investments in other sub-asset classes	Any investment not included in another *sub-asset class*.
Investments in registered investment companies	Investments in registered investment companies (other than cash management funds).
LCDS	Loan credit default swaps.
Leveraged loans	Loans that are made to entities whose senior unsecured long term indebtedness is *non-investment grade*. This may include loans made in connection with the financing structure of a leveraged buyout. Provide the market value of all investments in *leveraged loans*, but do not include any positions held via *LCDS* (these should be recorded in the *CDS* category).
Listed equity	Direct beneficial ownership of equities, including preferred equities, listed on a regulated exchange. Do not include synthetic or derivative exposures to equities. *ETFs* should be categorized based on the assets that the fund holds and should only be included in *listed equities* if the fund holds *listed equities* (e.g., a

	commodities *ETF* should be categorized based on the commodities it holds). Provide the market value of all investments in *listed equities*.
Listed equity derivatives	All synthetic or derivative exposures to equities, including preferred equities, listed on a regulated exchange. Include single stock futures, equity index futures, dividend swaps, total return swaps (contracts for difference), warrants and rights. Provide the *total gross* notional value of outstanding transactions (or, in the case of options, the delta adjusted notional value of outstanding transactions).
Natural gas	For questions regarding natural gas derivatives, provide the value of all exposure to natural gas that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled).
Other ABS	*ABS* products that are not covered by another *sub-asset class*. Provide the market value of all investments in *other ABS*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
Other commodities	*Commodities* other than *crude oil*, *natural gas*, *gold* and *power*. All types of oil and energy products (aside from *crude oil* and *natural gas*), including (but not limited to) ethanol, heating oil propane and gasoline, should be included in this category. For questions regarding *other commodity* derivatives, provide the value of all exposure to *other commodities* that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled).
Other derivatives	Any derivative not included in another *sub-asset class*. Provide the *total gross* notional value of outstanding transactions (or, in the case of options, the delta adjusted notional value of outstanding transactions).
Other loans	All loans other than *leveraged loans* and certificates of deposit. *Other loans* includes (but is not limited to) bilateral or syndicated loans to corporate entities. Provide the market value of all investments in *other loans*, but do not include any positions held via *LCDS* (these should be recorded in the *CDS* category).
Other structured products	Any *structured products* not included in another *sub-asset class*. Provide the market value of all investments in *other structured products*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
Power	For questions regarding power derivatives, provide the value of all exposure to power that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled).
Repo	Any purchase of securities coupled with an agreement to sell the same (or similar) securities at a later date at an agreed upon price. Provide the market value of all investments in *repos*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
Reverse repo	Any sale of securities coupled with an agreement to repurchase the same (or similar) securities at a later date at an agreed upon price.
RMBS	Residential mortgage backed securities, other than *agency MBS*. Provide the market value of all investments in *RMBS*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).

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Single name CDS	*CDSs* referencing a single entity. Provide the *total gross* notional value of all investments in *single name CDSs*. LMV should be the *total gross* notional value of protection written and SMV should be the *total gross* notional value of protection bought.
Sovereign bonds	Any notes, bonds and debentures issued by a national government (including central governments, other governments and central banks but excluding U.S. state and local governments), whether denominated in a local or foreign currency. Provide the market value of all investments in *sovereign bonds*. Include bond derivatives, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).
Structured products	Pre-packaged investment products, typically based on derivatives and including structured notes.
Unlisted equity	Direct beneficial ownership of equities, including preferred equities, that are not listed on a regulated exchange. Do not include synthetic or derivative exposures to equities. Provide the market value of all investments in *unlisted equities*.
Unlisted equity derivatives	All synthetic or derivative exposures to equities, including preferred equities, that are not listed on a regulated exchange. Include single stock futures, equity index futures, dividend swaps, total return swaps (contracts for difference), warrants and rights. Provide the *total gross* notional value of outstanding transactions (or, in the case of options, the delta adjusted notional value of outstanding transactions).
U.S. treasury securities	Direct obligations of the U.S. Government. Provide the market value of all investments in *U.S. treasury securities*. Include *U.S. treasury security* derivatives.
WBS	Whole business securitizations. Provide the market value of all investments in *WBS*, but do not include any positions held via *CDS* (these should be recorded in the *CDS* category).

By the Commodity Futures Trading Commission.

Dated: January 26, 2011.

David A. Stawick,

Secretary.

By the Securities and Exchange Commission.

Dated: January 26, 2011.

Elizabeth M. Murphy,

Secretary.

Appendix 1—Commodity Futures Trading Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers (by proxy), Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

[FR Doc. 2011–2175 Filed 2–10–11; 8:45 am]

BILLING CODE 8011–01–P; 6351–01–P



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Part VI

Environmental Protection Agency

40 CFR Parts 50, 53 and 58
National Ambient Air Quality Standards for Carbon Monoxide; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 53 and 58

[EPA–HQ–OAR–2008–0015; FRL–9261–4; 2060–AI43]

National Ambient Air Quality Standards for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Based on its review of the air quality criteria and the national ambient air quality standards (NAAQS) for carbon monoxide (CO), EPA is proposing to retain the current standards. EPA is also proposing changes to the ambient air monitoring requirements for CO including those related to network design.

DATES: Comments must be received on or before April 12, 2011.

Public Hearings: If, by February 18, 2011, EPA receives a request from a member of the public to speak at a public hearing concerning the proposed regulation, we will hold a public hearing on February 28, 2011 in Arlington, Virginia.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0015 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Docket No. EPA–HQ–OAR–2008–0015, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2008–0015, Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0015. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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 information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Public Hearing. If a public hearing is held, it will be held at the U.S. Environmental Protection Agency Conference Center, First Floor Conference Center South, One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202. All visitors will need to go through security and present a valid photo identification, such as a driver's license. To request a public hearing or information pertaining to a public hearing, contact Ms. Jan King, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards (C504–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541– 5665; fax number (919) 541–2664; e-mail address: *king.jan@epa.gov. See* the **SUPPLEMENTARY INFORMATION** for further information about a possible public hearing.

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 Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Deirdre Murphy, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C504–06, Research Triangle Park, NC 27711; telephone: 919–541–0729; fax: 919–541–0237; e-mail: *murphy.deirdre@epa.gov.* For further information specifically with regard to section IV of this notice, contact Mr. Nealson Watkins, Air Quality Analysis Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C304–06, Research Triangle Park, NC 27711; telephone: 919–541–5522; fax: 919–541–1903; e-mail: *watkins.nealson@epa.gov.* To request a public hearing or information pertaining to a public hearing, contact Ms. Jan King, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards (C504–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5665; fax number (919) 541–2664; e-mail address: *king.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
• Follow directions—the agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
• Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
• Describe any assumptions and provide any technical information and/or data that you used.
• Provide specific examples to illustrate your concerns, and suggest alternatives.
• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
• Make sure to submit your comments by the comment period deadline identified.

Availability of Related Information

A number of the documents that are relevant to this rulemaking are available through EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_index.html.* These documents include the *Plan for Review of the National Ambient Air Quality Standards for Carbon Monoxide* (Integrated Review Plan or IRP, USEPA, 2008), available at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_pd.html,* the *Integrated Science Assessment for Carbon Monoxide* (USEPA, 2010a), available at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_isa.html,* the *Quantitative Risk and Exposure Assessment for Carbon Monoxide—Amended* (USEPA, 2010b), available at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_rea.html,* and the *Policy Assessment for the Review of the Carbon Monoxide National Ambient Air Quality Standards* (USEPA, 2010c), available at *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_pa.html.* These and other related documents are also available for inspection and copying in the EPA docket identified above.

How can I find information about a possible public hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Jan King, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards (C504–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5665; fax number (919) 541–2664; e-mail address: *king.jan@epa.gov.* If a request for a public hearing is received by February 18, 2011, information about the hearing will be posted prior to the hearing on EPA's Web site for carbon monoxide regulatory actions at *http://www.epa.gov/airquality/urbanair/co/.*

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I. Background

A. Legislative Requirements

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list "air pollutant[s]" that in her "judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" and satisfy two other criteria, including "whose presence * * * in the ambient air results from numerous or diverse mobile or stationary sources" and to issue air quality criteria for those that are listed. Air quality criteria are intended to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *."

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants for which air quality criteria are issued. Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health." [1] A secondary standard, as defined in section 109(b)(2), must "specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects

[1] The legislative history of section 109 indicates that a primary standard is to be set at "the maximum permissible ambient air level * * * which will protect the health of any [sensitive] group of the population," and that for this purpose "reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group" [S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970)].

associated with the presence of such air pollutant in the ambient air."[2]

The requirement that primary standards include an adequate margin of safety was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA,* 647 F.2d 1130, 1154 (DC Cir 1980), *cert. denied,* 449 U.S. 1042 (1980); *American Petroleum Institute* v. *Costle,* 665 F.2d 1176, 1186 (DC Cir. 1981), *cert. denied,* 455 U.S. 1034 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that include an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollution levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree. The CAA does not require the Administrator to establish a primary NAAQS at a zero-risk level or at background concentration levels, *see Lead Industries Association* v. *EPA,* 647 F.2d at 1156 n. 51, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

In addressing the requirement for an adequate margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of the population(s) at risk, and the kind and degree of the uncertainties that must be addressed. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA,* 647 F.2d at 1161–62; *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 495 (2001).

In setting standards that are "requisite" to protect public health and welfare, as provided in section 109(b), EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 473. In establishing "requisite" primary and secondary standards, EPA may not consider the costs of implementing the standards. *Id.* at 471.

Section 109(d)(1) of the CAA requires that "[n]ot later than December 31, 1980, and at 5-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards * * * and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate * * *" Section 109(d)(2) requires that an independent scientific review committee "shall complete a review of the criteria * * * and the national primary and secondary ambient air quality standards * * * and shall recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate. * * *" This independent review function is performed by the Clean Air Scientific Advisory Committee (CASAC).

B. Related Carbon Monoxide Control Programs

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once EPA has established them. Under section 110 of the Act, and related provisions, States are to submit, for EPA approval, State implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with EPA, also administer the prevention of significant deterioration program. *See* CAA sections 160–169. In addition, Federal programs provide for nationwide reductions in emissions of these and other air pollutants through the Federal motor vehicle and motor vehicle fuel control program under title II of the Act, (CAA sections 202–250) which involves controls for emissions from moving sources and controls for the fuels used by these sources; new source performance standards under section 111; and title IV of the Act (CAA sections 402–416), which specifically provides for major reductions in CO emissions.

C. Review of the Air Quality Criteria and Standards for Carbon Monoxide

EPA initially established NAAQS for CO on April 30, 1971. The primary standards were established to protect against the occurrence of carboxyhemoglobin levels in human blood associated with health effects of concern. The standards were set at 9 parts per million (ppm), as an 8-hour average and 35 ppm, as a 1-hour average, neither to be exceeded more than once per year (36 FR 8186). In the 1971 decision, the Administrator judged that attainment of these standards would provide the requisite protection of public health with an adequate margin of safety and would also provide requisite protection against known and anticipated adverse effects on public welfare, and accordingly set the secondary (welfare-based) standards identical to the primary (health-based) standards.

In 1985, EPA concluded its first periodic review of the criteria and standards for CO (50 FR 37484). In that review, EPA updated the scientific criteria upon which the initial CO standards were based through the publication of the 1979 *Air Quality Criteria Document for Carbon Monoxide* (AQCD; USEPA, 1979a) and prepared a Staff Paper (USEPA, 1979b), which, along with the 1979 AQCD, served as the basis for the development of the notice of proposed rulemaking which was published on August 18, 1980 (45 FR 55066). Delays due to uncertainties regarding the scientific basis for the final decision resulted in EPA's announcing a second public comment period (47 FR 26407). Following substantial reexamination of the scientific data, EPA prepared an Addendum to the 1979 AQCD (USEPA, 1984a) and an updated Staff Paper (USEPA, 1984b). Following review by CASAC (Lippmann, 1984), EPA announced its decision not to revise the existing primary standard and to revoke the secondary standard for CO on September 13, 1985, due to a lack of evidence of effects on public welfare at ambient concentrations (50 FR 37484).

On August 1, 1994, EPA concluded its second periodic review of the criteria and standards for CO by deciding that revisions to the CO NAAQS were not warranted at that time (59 FR 38906). This decision reflected EPA's review of relevant scientific information assembled since the last review, as contained in the 1991 AQCD (USEPA, 1991) and the 1992 Staff Paper (USEPA, 1992). Thus, the primary standards were retained at 9 ppm with an 8-hour averaging time, and 35 ppm with a 1-hour averaging time, neither to be exceeded more than once per year (59 FR 38906).

EPA initiated the next periodic review in 1997 and the final 2000 AQCD (U.S. EPA, 2000) was released in August 2000. After release of the AQCD, Congress requested that the National Research Council (NRC) review the

[2] Welfare effects as defined in section 302(h) (42 U.S.C. 7602(h)) include, but are not limited to, "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being."

impact of meteorology and topography on ambient CO concentrations in high altitude and extreme cold regions of the U.S. The NRC convened the Committee on Carbon Monoxide Episodes in Meteorological and Topographical Problem Areas, which focused on Fairbanks, Alaska as a case-study.

A final report, "Managing Carbon Monoxide Pollution in Meteorological and Topographical Problem Areas," was published in 2003 (NRC, 2003) and offered a wide range of recommendations regarding management of CO air pollution, cold start emissions standards, oxygenated fuels, and CO monitoring. Following completion of the NRC report, EPA did not conduct rulemaking to complete the review.

On September 13, 2007, EPA issued a call for information from the public (72 FR 52369) requesting the submission of recent scientific information on specified topics. A workshop was held on January 28–29, 2008 (73 FR 2490) to discuss policy-relevant scientific and technical information to inform EPA's planning for the CO NAAQS review. Following the workshop, a draft Integrated Review Plan (IRP) (USEPA, 2008a) was made available in March 2008 for public comment and was discussed by the CASAC via a publicly accessible teleconference consultation on April 8, 2008 (73 FR 12998; Henderson, 2008). EPA made the final IRP available in August 2008 (USEPA, 2008b).

In preparing the *Integrated Science Assessment for Carbon Monoxide* (ISA or Integrated Science Assessment), EPA held an authors' teleconference in November 2008 with invited scientific experts to discuss preliminary draft materials prepared as part of the ongoing development of the CO ISA and its supplementary annexes. The first draft ISA (USEPA, 2009a) was made available for public review on March 12, 2009 (74 FR 10734) and reviewed by CASAC at a meeting held on May 12–13, 2009 (74 FR 15265). A second draft ISA (USEPA, 2009b) was released for CASAC and public review on September 23, 2009 (74 FR 48536), and it was reviewed by CASAC at a meeting held on November 16–17, 2009 (74 FR 54042). The final ISA was released in January 2010 (USEPA, 2010a).

In May 2009, OAQPS released a draft planning document, the draft Scope and Methods Plan (USEPA, 2009c), for consultation with CASAC and public review at the CASAC meeting held on May 12–13, 2009. Taking into consideration comments on the draft Plan from CASAC (Brain, 2009) and the public, OAQPS staff developed and released for CASAC review and public comment a first draft Risk and Exposure Assessment (REA) (USEPA, 2009d), which was reviewed at the CASAC meeting held on November 16–17, 2009. Subsequent to that meeting and taking into consideration comments from CASAC (Brain and Samet, 2010a) and public comments on the first draft REA, a second draft REA (USEPA, 2010d) was released for CASAC review and public comment in February 2010, and reviewed at a CASAC meeting held on March 22–23, 2010. Drawing from information in the final CO ISA and the second draft REA, EPA released a draft Policy Assessment (PA) (USEPA, 2010e) in early March, 2010 for CASAC review and public comment at the same meeting. Taking into consideration comments on the second draft REA and the draft PA from CASAC (Brain and Samet, 2010b, 2010c) and the public, staff completed the quantitative assessments which are presented in the final REA (USEPA, 2010b). Staff additionally took into consideration those comments and the final REA analyses in completing the final Policy Assessment (USEPA, 2010c) which was released in October, 2010.

The schedule for completion of this review is governed by a court order resolving a lawsuit filed in March 2003 by a group of plaintiffs who alleged that EPA had failed to perform its mandatory duty, under section 109(d)(1), to complete a review of the CO NAAQS within the period provided by statute. The court order that governs this review, entered by the court on November 14, 2008 and amended on August 30, 2010, provides that EPA will sign, for publication, notices of proposed and final rulemaking concerning its review of the CO NAAQS no later than January 28, 2011 and August 12, 2011, respectively.

This action presents the Administrator's proposed decisions on the current CO standards. Throughout this preamble a number of conclusions, findings, and determinations proposed by the Administrator are noted. Although they identify the reasoning that supports this proposal, they are not intended to be final or conclusive in nature. The EPA invites general, specific, and technical comments on all issues involved with this proposal, including all such proposed judgments, conclusions, findings, and determinations.

II. Rationale for Proposed Decisions on the Primary Standards

This section presents the rationale for the Administrator's proposed decision to retain the existing CO primary standards.[3] As discussed more fully below, this rationale is based on a thorough review, in the Integrated Science Assessment, of the latest scientific information, published through mid-2009, on human health effects associated with the presence of CO in the ambient air. This proposal also takes into account: (1) Staff assessments of the most policy-relevant information in the ISA and staff analyses of air quality, human exposure and health risks presented in the REA and the Policy Assessment, upon which staff conclusions regarding appropriate considerations in this review are based; (2) CASAC advice and recommendations, as reflected in discussions of drafts of the ISA, REA and PA at public meetings, in separate written comments, and in CASAC's letters to the Administrator; and (3) public comments received during the development of these documents, either in connection with CASAC meetings or separately.

In presenting the rationale and its foundations, this section begins with a summary of current air quality information in section II.A. Section II.B summarizes the body of evidence supporting this rationale, including key health endpoints associated with exposure to ambient CO. This rationale also draws upon the results of the quantitative exposure and risk assessments, discussed below in section II.C. Evidence- and exposure/dose-based considerations that form the basis for the Administrator's proposed decisions on the adequacy of the current standard are discussed in section II.D.2.a and II.D.2.b, respectively. CASAC advice is summarized in section II.D.3. The Administrator's proposed conclusions are presented in section II.D.4.

A. Air Quality Information

This section provides a general overview of the current air quality conditions to provide context for this consideration of the current standards for carbon monoxide. A more comprehensive discussion of air quality information is provided in the ISA (ISA, sections 3.2 and 3.4) and summarized in the Policy Assessment, and a more detailed discussion of aspects particularly relevant to the exposure assessment is provided in the REA (REA, chapter 3).

[3] As explained below in section IV.A, EPA is proposing to repromulgate the Federal reference method for CO, as set forth in Appendix C of 40 CFR part 50. Consistent with EPA's proposed decision to retain the standards, the recodification clarifies and updates the text of the FRM, but does not make substantive changes to it.

1. Anthropogenic Sources and Emissions of Carbon Monoxide

Carbon monoxide in ambient air is formed primarily by the incomplete combustion of carbon-containing fuels and by photochemical reactions in the atmosphere. As a result of the combustion conditions, CO emissions from large fossil-fueled power plants are typically very low because optimized fuel consumption conditions make boiler combustion highly efficient. In contrast, internal combustion engines used in many mobile sources have widely varying operating conditions. Therefore, higher and more varying CO formation results from the operation of these mobile sources (ISA, section 3.2). As with previous reviews of the CO NAAQS, mobile sources continue to be a significant source sector for CO in ambient air, as indicated by national emissions estimates from on-road vehicles, which accounted for approximately half of the total CO emissions by individual source sectors in 2002 (ISA, Figure 3–1).[4] National-scale anthropogenic CO emissions have decreased by approximately 45% between 1990 and 2005, with nearly all of this national-scale reduction coming from reductions in on-road vehicle emissions (ISA, Figure 3–2; PA, Figure 1–1; 2005 NEI [5]). The role of mobile source emissions is evident in the spatial and temporal patterns of ambient CO concentrations, which are heavily influenced by the patterns associated with mobile source emissions (ISA, chapter 3). In some metropolitan areas of the U.S., due to their greater motor vehicle density relative to rural areas, on-road mobile source contribution to all ambient CO emissions was estimated to be as high as approximately 75%, based on the 2002 National Emissions Inventory (ISA, p. 3–2). However, the mobile source contribution can vary widely in specific areas. As an example, 2002 NEI estimates of on-road mobile source emissions in urban Denver County, Colorado are about 74% of total CO emissions and emissions from all mobile sources (on-road and non-road combined) are estimated to contribute about 98% (ISA, section 3.2.1). In contrast, 2002 NEI estimates of on-road CO emissions were just 20% of the total for rural Garfield County, Colorado[6] (ISA, chapter 3, Figure 3–6).

2. Ambient Concentrations

As described in section II.A.1 above, mobile source emissions are major contributors to CO emissions in urban areas, with corresponding influence on ambient CO concentrations and associated concentration gradients, with highest ambient concentrations occurring on or nearest roadways, particularly highly travelled roadways, and lowest concentrations in more distant locations (ISA, section 3.5.1.3; REA, section 3.1.3). For example, as described in the ISA CO concentrations measured within 20 meters of an interstate highway can range from 2 to 10 times greater than CO concentrations measured as far as 300 meters from a major road, possibly influenced by wind direction and on-road vehicle density (ISA, section 3.5.1.3, Figures 3–29 and 3–30; Zhu *et al.,* 2002; Baldauf *et al.,* 2008a,b). Additionally, the role of motor vehicles in influencing ambient concentrations contributes to the occurrence of diurnal variation in concentrations reflecting rush hour patterns (ISA, 3.5.2.2; REA, p. 3–8). The influence of motor vehicle emissions on ambient concentrations contributes to the important role of in-vehicle microenvironments in influencing short-term ambient CO exposures, as described in more detail in the REA and summarized in sections II.C.1 and II.D.2 below.

In 2009, approximately 350 ambient monitoring stations across the U.S. reported continuous hourly averages of CO concentrations to EPA's Air Quality System.[7] For the most recent period for which air quality status relative to the CO NAAQS has been analyzed (2009), all areas of the U.S. meet both CO NAAQS.[8] As of September 27, 2010, there are no areas designated as nonattainment for the CO NAAQS (75 FR 59090). Since 2005, one area (Jefferson County, Alabama) has failed to meet the 8-hour standard during some periods. Large CO emissions sources in this area are associated with an integrated iron and steel facility. As described in section 1.3.3 of the Policy Assessment, 2009 concentrations of CO at most currently operating monitors are well below the current standards, with just a few locations having concentrations near the controlling 8-hour standard of 9 ppm as a second maximum 8-hour average.[9] Of the counties with monitoring sites in 2009, sites in 3 counties reported second maximum 8-hour average concentrations at or above 6.4 ppm (PA, Figure 1–2).

The current levels of ambient CO across the U.S. reflect the steady declines in ambient concentrations that have occurred over the past several years. Both the second highest 1-hour and 8-hour concentrations have significantly declined since the last review. At the set of sites across the U.S. that have been continuously monitored since 1990 the average second highest 8-hour and 1-hour concentrations have declined by nearly 70% (PA, section 1.3.3).

B. Health Effects Information

1. Carboxyhemoglobin as Biomarker and Mechanism of Toxicity

As discussed in the Integrated Science Assessment, in this review, as in the past (*e.g.,* USEPA, 2000; USEPA, 1991), the best characterized mechanism of action of CO is tissue hypoxia caused by binding of CO to hemoglobin to form carboxyhemoglobin (COHb). Accordingly, COHb level in blood continues to be well recognized as an important internal dose metric and the one most commonly used in evaluating CO exposure and the potential for health effects (ISA, p. 2–4, sections 4.1, 4.2, 5.1.1; 1991 AQCD, 2000 AQCD, 2010 ISA).

Increasing levels of COHb with subsequent decrease in oxygen availability for organs and tissues are of

[4] EPA compiles CO emissions estimates for the U.S. in the National Emissions Inventory (NEI). Estimates come from various sources and different data sources use different data collection methods, most of which are based on engineering calculations and estimates rather than measurements. Although these estimates are generated using well-established approaches, uncertainties are inherent in the emission factors and models used to represent sources for which emissions have not been directly measured. Uncertainties vary by source category, season and region (ISA, section 3.2.1). At the time of the ISA development, the 2002 NEI was providing the most recent publicly available CO emissions estimates for the U.S. that meet EPA's data quality assurance objectives. Such estimates are now available from the 2005 NEI.

[5] The emissions trends information in this statement is drawn from recently available 2005 National Emissions Inventory estimates (*http://www.epa.gov/ttn/chief/net/2005inventory.html,* Tier Summaries) and 1990 and other estimates, available at *http://www.epa.gov/ttn/chief/net/critsummary.html* Figure 3–2 from the ISA provides estimates through 2002.

[6] The 2002 National Emissions Inventory estimate for on-road emissions in Garfield County is 20,000 tons, and the total emissions from all sources is estimated to be 98,831 (99K) tons. Thus, in this example the on-road vehicles accounts for 20.2% of the total emissions (ISA, section 3, figure 3–6). In contrast, the 2002 Denver County on-road emissions account for 74% of the total for the county which is estimated at approximately 180,000 tons.

[7] *http://www.epa.gov/ttn/airs/airsaqs/.*

[8] The air quality status in areas monitored relative to the CO NAAQS is provided at *http://www.epa.gov/air/airtrends/values.html.*

[9] As the form of the CO 8-hour standard is not-to-be-exceeded more than once per year, the second highest 8-hour average in a year is the design value for this standard. Based on the current rounding convention, the standard is met if the CO concentrations over a year result in a design value at or below 9.4 ppm. Additional information is available at *http://www.epa.gov/airtrends/values.html.*

concern in people with pre-existing heart disease who have compromised compensatory mechanisms (*e.g.,* lack of capacity to increase blood flow in response to increased CO). The integrative review of health effects of CO indicates that "the clearest evidence indicates that individuals with [coronary artery disease] are most susceptible to an increase in CO-induced health effects" (ISA, section 5.7.8) and the evidence continues to support levels of COHb in the blood as the most useful indicator of CO exposure that is related to the health effects of CO of major concern.

Carboxyhemoglobin occurs in the blood due to endogenous CO production from biochemical reactions associated with normal breakdown of heme proteins, as well as in response to inhaled (exogenous) CO exposures (ISA, section 4.5). The production of endogenous CO and levels of endogenous COHb vary with several physiological characteristics (*e.g.,* slower COHb elimination with increasing age), as well as some disease states, which can lead to higher endogenous levels in some individuals (ISA, section 4.5). The amount of COHb formed in response to exogenous CO is dependent on the CO concentration and duration of exposure, exercise (which increases the amount of air removed and replaced per unit of time for gas exchange), the pulmonary diffusing capacity for CO, ambient pressure, health status, and the specific metabolism of the exposed individual (ISA, chapter 4; 2000 AQCD, chapter 5). The formation of COHb is a reversible process, but the high affinity of CO for hemoglobin, which affects the elimination half-time for COHb, can lead to increased COHb levels in some circumstances.

As discussed in the REA, exposure to CO in ambient air can occur outdoors as well as through infiltration of ambient air into indoor locations (REA, section 2.3). Additionally, indoor sources such as gas stoves and tobacco smoke can, where present, be important contributors to total CO exposure and can result in much greater CO exposures and associated COHb levels than those associated with ambient sources (ISA, section 3.6.5.2).[10] For example, indoor source-related exposures, such as faulty furnaces or other combustion appliances, have been estimated in the past to lead to COHb levels on the order of twice as high as those short-term exposures to ambient CO considered more likely to be encountered by the general public (2000 AQCD, p. 7–4). Further, some assessments performed for previous reviews have included modeling simulations both without and with indoor sources (gas stoves and tobacco smoke) to provide context for the assessment of ambient CO exposure and dose (*e.g.,* U.S. EPA, 1992; Johnson *et al.,* 2000), and these assessments have found that nonambient sources have a substantially greater impact on the highest total exposures experienced by the simulated population than do ambient sources (Johnson *et al.,* 2000; REA, sections 1.2 and 6.3).[11]. However, the focus of this REA, conducted to inform the current review of the CO NAAQS, is on sources of ambient CO. While recognizing this information regarding the potential for indoor sources, where present, to play a role in CO exposures and COHb levels, the exposure modeling in the current review (described in section II.C below) did not include indoor CO sources in order to focus on the impact of ambient CO sources on population COHb levels.

Apart from the impaired oxygen delivery to tissues related to COHb formation, the evidence also indicates alternative mechanisms of CO-induced effects independent of limited oxygen availability (2000 AQCD, section 5.9; ISA, section 5.1.3). These mechanisms are primarily associated with CO's ability to bind heme-containing proteins other than hemoglobin and myoglobin, and involve a wide range of molecular targets and CO concentrations, as described in the 2000 AQCD (USEPA, 2000, section 5.6) and in the ISA (ISA, section 5.1.3). Older toxicological studies demonstrated that exposure to high concentrations of CO resulted in altered functions of heme proteins other than myoglobin and hemoglobin, potentially interfering with basic cell and molecular processes and leading to dysfunction and/or disease. More recent toxicological *in vitro* and *in vivo* studies have provided evidence of alteration of nitric oxide signaling, inhibition of cytochrome C oxidase, heme loss from protein, disruption of iron homeostasis and alteration of cellular reduction-oxidation status (ISA, section 5.1.3.2). The ISA notes that these mechanisms may be interrelated. The evidence for these alternative mechanisms and the role they may play in CO-induced health effects at concentrations relevant to the current NAAQS is not clear.

As noted in the ISA, "CO may be responsible for a continuum of effects from cell signaling to adaptive responses to cellular injury, depending on intracellular concentrations of CO, heme proteins and molecules which modulate CO binding to heme proteins" (ISA, section 5.1.3.3). However, as noted in the Policy Assessment, new research based on this evidence for pathways other than those related to impaired oxygen delivery to tissues is needed to further understand these pathways and their linkage to CO-induced effects in susceptible populations. Thus, the evidence indicates that COHb continues to be the most useful and well-supported indicator of CO exposures and the best biomarker to characterize the potential for health effects associated with exposures to ambient CO at this time (PA, section 2.2.1).

2. Nature of Effects

As observed in the Policy Assessment, the long-standing body of evidence that has established many aspects of the biological effects of CO continues to contribute to our understanding of the health effects of ambient CO (PA, section 2.2.1). Binding to heme proteins and the alteration of their function is the common mechanism underlying biological responses to CO. Upon inhalation, CO diffuses through the respiratory zone (alveoli) to the blood where it binds to hemoglobin, forming COHb. Accordingly, inhaled CO elicits various health effects through binding to, and associated alteration of the function of, a number of heme-containing molecules, mainly hemoglobin (*see e.g.,* ISA, section 4.1). The best characterized health effect associated with CO levels of concern is hypoxia (reduced oxygen availability) induced by increased COHb levels in blood and decreased oxygen availability to critical tissues and organs, specifically the heart (ISA, section 5.1.2). Consistent with this, medical conditions that affect the biological mechanisms to compensate for this effect (*e.g.,* vasodilation and increased coronary blood flow with increased oxygen delivery to the myocardium) can contribute to a reduced amount of oxygen available to key body tissues, potentially affecting organ system

[10] A significant source of nonambient CO long recognized as contributing to elevated COHb levels is tobacco smoking (*e.g.,* ISA, Figure 4–12). Further, baseline COHb levels in active smokers have been estimated to range from 3 to 8% for one- to two-pack-per-day smokers. As a result of their higher baseline COHb levels, smokers may exhale more CO into the air than they inhale from the ambient environment when not smoking. Tobacco smoking can also contribute to increased CO exposures and associated COHb levels in nonsmokers (2000 AQCD, p. 7–4).

[11] As has been recognized in previous CO NAAQS reviews, such sources cannot be effectively mitigated by setting more stringent ambient air quality standards (59 FR 38914).

function and limiting exercise capacity (2000 AQCD, section 7.1).[12]

The body of health effects evidence for CO has grown considerably since the review completed in 1994 with the addition of numerous epidemiological and toxicological studies (ISA; 2000 AQCD). This evidence provides additional detail and support to our prior understanding of CO effects and population susceptibility. Most notably, the current evidence includes much expanded epidemiological evidence that is consistent with previous conclusions regarding cardiovascular disease-related susceptibility (ISA, section 5.7; 2000 AQCD, section 7.7). In this review, the clearest evidence for ambient CO-related effects is available for cardiovascular effects. Using an established framework to characterize the evidence as to likelihood of causal relationships between exposure to ambient CO and specific health effects (ISA, chapter 1) the ISA states that "Given the consistent and coherent evidence from epidemiologic and human clinical studies, along with biological plausibility provided by CO's role in limiting oxygen availability, it is concluded that a causal relationship is likely to exist between relevant [13] short-term CO exposures and cardiovascular morbidity" (ISA, p. 2–6, section 2.5.1). Additionally, as mentioned above, the ISA judges the evidence to be suggestive of causal relationships between relevant short- and long-term CO exposures and CNS effects, birth outcomes and developmental effects following long-term exposure, respiratory morbidity following short-term exposure, and mortality following short-term exposure (ISA, section 2.5, Table 2–1).

Similar to the previous review, results from controlled human exposure studies of individuals with coronary artery disease (CAD) [14] (Adams *et al.,* 1988; Allred *et al.,* 1989a, 1989b, 1991; Anderson *et al.,* 1973; Kleinman *et al.,* 1989, 1998; Sheps *et al.,* 1987 [15]) are the "most compelling evidence of CO-induced effects on the cardiovascular system" (ISA, section 5.2). Additionally, the use of an internal dose metric, COHb, adds to the strength of the findings in these controlled exposure studies. As a group, these studies demonstrate the role of short-term CO exposures in increasing the susceptibility of people with CAD to incidents of exercise-associated myocardial ischemia. Toxicological studies described in the current review provide evidence of CO effects on the cardiovascular system, including electrocardiographic effects of 1-hour exposures to 35 ppm CO in a rat strain developed as an animal model of cardiac susceptibility (ISA, section 5.2.5.3).

Among the controlled human exposure studies, the ISA places principal emphasis on the study of CAD patients by Allred *et al.* (1989a, 1989b, 1991) [16] (which was also considered in the previous review) for the following reasons: (1) Dose-response relationships were observed; (2) effects were observed at the lowest COHb levels tested (mean of 2–2.4% COHb [17] following experimental CO exposure), with no evidence of a threshold; (3) objective measures of myocardial ischemia (ST-segment depression) [18] were assessed, as well as the subjective measure of decreased time to induction of angina; (4) measurements were taken both by CO-oximetry (CO–Ox) and by gas chromatography (GC), which provides a more accurate measurement of COHb blood levels [19]; (5) a large number of study subjects were used; (6) a strict protocol for selection of study subjects was employed to include only CAD patients with reproducible exercise-induced angina; and (7) the study was conducted at multiple laboratories around the U.S. This study evaluated changes in time to exercise-induced onset of markers of myocardial ischemia resulting from two short (approximately 1-hour) CO exposures targeted to result in mean study subject COHb levels of 2% and 4%, respectively (ISA, section 5.2.4). In this study, subjects (n=63) on three separate occasions underwent an initial graded exercise treadmill test, followed by 50 to 70-minute exposures under resting conditions to room air CO concentrations or CO concentrations targeted for each subject to achieve blood COHb levels of 2% and 4%. The exposures were to average CO concentrations of 0.7 ppm (room air concentration range 0–2 ppm), 117 ppm (range 42–202 ppm) and 253 ppm (range 143–357 ppm). After the 50- to 70-minute exposures, subjects underwent a second graded exercise treadmill test, and the percent change in time to onset of angina and time to ST endpoint between the first and second exercise tests was determined. For the two CO exposures, the average post-exposure COHb concentrations were reported as 2.4% and 4.7%, and the subsequent post-exercise average COHb concentrations were reported as 2.0% and 3.9%.[20]

[12] For example, people with peripheral vascular diseases and heart disease patients often have markedly reduced circulatory capacity and reduced ability to compensate for increased circulatory demands during exercise and other stress (2000 AQCD, p. 7–7).

[13] Relevant CO exposures are defined in the ISA as "generally within one or two orders of magnitude of ambient CO concentrations" (ISA, section 2.5).

[14] Coronary artery disease (CAD), often also called coronary heart disease or ischemic heart disease is a category of cardiovascular disease associated with narrowed heart arteries. Individuals with this disease may have myocardial ischemia, which occurs when the heart muscle receives insufficient oxygen delivered by the blood. Exercise-induced angina pectoris (chest pain) occurs in many of them. Among all patients with diagnosed CAD, the predominant type of ischemia, as identified by ST segment depression, is asymptomatic (*i.e.,* silent). Patients who experience angina typically have additional ischemic episodes that are asymptomatic (2000 AQCD, section 7.7.2.1). In addition to such chronic conditions, CAD can lead to sudden episodes, such as myocardial infarction (ISA, p. 5–24).

[15] Statistical analyses of the data from Sheps *et al.,* (1987) by Bissette *et al* (1986) indicate a significant decrease in time to onset of angina at 4.1% COHb if subjects that did not experience exercise-induced angina during air exposure are also included in the analyses.

[16] Other controlled human exposure studies of CAD patients (listed in Table 2–2 of the PA, and discussed in more detail in the 1991 and 2000 AQCDs) similarly provide evidence of reduced time to exercise-induced angina associated with elevated COHb resulting from controlled short-duration exposure to increased concentrations of CO.

[17] These levels and other COHb levels described for this study below are based on GC analysis unless otherwise specified. Matched measurements available for CO-oximetry (CO–Ox) and gas chromatography (GC) in this study indicate CO–Ox measurements of 2.65% (post-exercise mean) and 3.21% (post-exposure mean) corresponding to the GC measurement levels of 2.00% (post-exercise mean) to 2.38% (post-exposure mean) for the lower exposure level assessed in this study (Allred *et al.,* 1991).

[18] The ST-segment is a portion of the electrocardiogram, depression of which is an indication of insufficient oxygen supply to the heart muscle tissue (myocardial ischemia). Myocardial ischemia can result in chest pain (angina pectoris) or such characteristic changes in ECGs or both. In individuals with coronary artery disease, it tends to occur at specific levels of exercise. The duration of exercise required to demonstrate chest pain and/or a 1-mm change in the ST segment of the ECG were key measurements in the multicenter study by Allred *et al* (1989a, 1989b, 1991).

[19] As stated in the ISA, the gas chromatographic technique for measuring COHb levels "is known to be more accurate than spectrophotometric measurements, particularly for samples containing COHb concentrations < 5%" (ISA, p. 5–41). CO-oximetry is a spectrophotometric method commonly used to rapidly provide approximate concentrations of COHb during controlled exposures (ISA, p. 5–41). At the low concentrations of COHb (<5%) more relevant to ambient CO exposures, co-oximeters are reported to overestimate COHb levels compared to GC measurements, while at higher concentrations, this method is reported to produce underestimates (ISA, p.4–18).

[20] While the COHb blood level for each subject during the exercise tests was intermediate between the post-exposure and subsequent post-exercise measurements (*e.g.,* mean 2.4–2.0% and 4.7–3.9%), the study authors noted that the measurements at the end of the exercise test represented the COHb concentrations at the approximate time of onset of myocardial ischemia as indicated by angina and ST segment changes. The corresponding ranges of CO–Ox measurements for the two exposures were 2.7–3.2% and 4.7–5.6%. In this document, we refer to the GC-measured mean of 2.0% or 2.0–2.4% for the

Across all subjects, the mean time to angina onset for control ("room" air) exposures was approximately 8.5 minutes, and the mean time to ST endpoint was approximately 9.5 minutes (Allred *et al.,* 1989b). Relative to room-air exposure that resulted in a mean COHb level of 0.6% (post-exercise), exposure to CO resulting in post-exercise mean COHb concentrations of 2.0% and 3.9% were observed to decrease the exercise time required to induce ST-segment depression by 5.1% (p=0.01) and 12.1% (p<0.001), respectively. These changes were well correlated with the onset of exercise-induced angina, the time to which was shortened by 4.2% (p=0.027) and 7.1% (p=0.002), respectively, for the two experimental CO exposures (Allred *et al.,* 1989a, 1989b, 1991).[21] As at the time of the last review, while ST-segment depression is recognized as an indicator of myocardial ischemia, the exact physiological significance of the observed changes among those with CAD is unclear (ISA, p. 5–48).

No controlled human exposure studies have been specifically designed to evaluate the effect of controlled short-term exposures to CO resulting in COHb levels lower than a study mean of 2% (ISA, section 5.2.6). However, an important finding of the multi-laboratory study was the dose-response relationship observed between COHb and the markers of myocardial ischemia, with effects observed at the lowest increases in COHb tested, without evidence of a measurable threshold effect. As reported by the authors, the results comparing "the effects of increasing COHb from baseline levels (0.6%) to 2 and 3.9% COHb showed that each produced further changes in objective ECG measures of ischemia" implying that "small increments in COHb could adversely affect myocardial function and produce ischemia" (Allred *et al.,* 1989b, 1991).

The epidemiological evidence has expanded considerably since the last review including numerous additional studies that are coherent with the evidence on markers of myocardial ischemia from controlled human exposure studies of CAD patients (ISA, section 2.7). The most recent set of epidemiological studies in the U.S. have evaluated the associations between ambient concentrations of multiple pollutants (*i.e.* fine particles or $PM_{2.5,}$ nitrogen dioxide, sulfur dioxide, ozone, and CO) at fixed-site ambient monitors and increases in emergency department visits and hospital admissions for specific cardiovascular health outcomes including ischemic heart disease (IHD), myocardial infarction (MI), congestive heart failure (CHF), and cardiovascular diseases (CVD) as a whole (Bell *et al.,* 2009; Koken *et al.,* 2003; Linn *et al.,* 2000; Mann *et al.,* 2002; Metzger *et al.,* 2004; Symons *et al.,* 2006; Tolbert *et al.,* 2007; Wellenius *et al.,* 2005). Findings of positive associations for these outcomes with metrics of ambient CO concentrations are coherent with the evidence from controlled human exposure studies of myocardial ischemia-related effects resulting from elevated CO exposures (ISA, section 2.5.1; ISA, Figure 2–1). In these studies, the ambient CO concentration averaging time for which health outcomes were analyzed varied from 1 hour to 24 hours, with the air quality metrics based on either a selected central-site monitor for the area or an average for multiple monitors in the area of interest. The study areas for which positive associations of these metrics were reported with IHD, MI and CVD outcomes include: the Atlanta, Georgia metropolitan statistical area; the greater Los Angeles, California area; and a group of 126 urban counties. Together the individual study periods spanned the years from 1988 through 2005. The risk estimates from these studies indicate statistically significant positive associations were observed with ambient CO concentrations based on air quality for the day of hospital admission or based on the average of the selected ambient CO concentration metric across that day and 2 or 3 days previous (ISA, Figures 5–2 and 5–5). Many of the studies for these outcomes include same day or next day lag periods, which, as noted in the ISA "are consistent with the proposed mechanism and biological plausibility of these CVD outcomes" (ISA, p. 5–40).[22]

Additionally, there are U.S. studies reporting associations with hospital admissions for CHF, a condition that affects an individual's ability to compensate for reduced oxygen availability. These include one in southern California which reported a significant association for ambient CO with hospital admissions for CHF (Linn *et al.,* 2000), as well as studies in Allegheny County (Pittsburgh) for 1987–1999 study period (Wellenius *et al.,* 2005), and Denver for the months of July-August during 1993–1997 (Koken *et al.,* 2003; ISA, pp. 5–31 to 5–33). Risk estimates for all three of these studies are based on the 24-hour CO concentration, with the California and Allegheny County studies' association with same-day air quality, while the association shown for the Denver study was with ambient CO concentration three days prior to health outcome (PA, Table 2–1).

As noted by the ISA, "[s]tudies of hospital admissions and ED visits for IHD provide the strongest [epidemiological] evidence of ambient CO being associated with adverse CVD outcomes" (ISA, p. 5–40, section 5.2.3). With regard to studies for other measures of cardiovascular morbidity, the ISA notes that "[t]hough not as consistent as the IHD effects, the effects for all CVD hospital admissions (which include IHD admissions) and CHF hospital admissions also provide evidence for an association of cardiovascular outcomes and ambient CO concentrations" (ISA, section 5.2.3). While noting the difficulty in determining the extent to which CO is independently associated with CVD outcomes in this group of studies as compared to CO as a marker for the effects of another traffic-related pollutant or mix of pollutants, the ISA concludes that the epidemiological evidence, particularly when considering the copollutant analyses, provides support to the clinical evidence for a direct effect of short-term ambient CO exposure on CVD morbidity (ISA, pp. 5–40 to 5–41).

As discussed in detail in the ISA, additional epidemiological studies have evaluated associations of ambient CO with other cardiovascular effects since the last review. For example, preliminary evidence of a link between exposure to CO and alteration of blood markers of coagulation and inflammation in individuals with CAD or CVD has been provided by a few well conducted and informative studies (ISA, Table 5–6; Delfino *et al.,* 2008; Liao *et al.,* 2005). As noted by the ISA, however, further studies are warranted to investigate the role of these markers in prothrombotic events and their possible contribution to the pathophysiology of CO-induced aggravation of ischemic heart disease

COHb levels resulting from the lower experimental CO exposure.

[21] Another indicator measured in the study was the combination of heart rate and systolic blood pressure which provides a clinical index of the work of the heart and myocardial oxygen consumption, since heart rate and blood pressure are major determinants of myocardial oxygen consumption (Allred *et al.,* 1991). A decrease in oxygen to the myocardium would be expected to be paralleled by ischemia at lower heart rate and systolic blood pressure. This heart rate-systolic blood pressure indicator at the time to ST-endpoint was decreased by 4.4% at the 3.9% COHb dose level and by a nonstatistically-significant, smaller amount at the 2.0% COHb dose level.

[22] Of the studies for which risk estimates are based on multi-day averages (the Atlanta studies and the California study by Mann *et al.,* 2002), the California study by Mann *et al.,* (2002) also observed a significant positive association with same day CO concentration.

(ISA, section 5.2.1.8). Other epidemiological studies (including field and panel studies) also provide some evidence of a link between CO exposure and heart rate and heart rate variability (ISA, section 5.2.1.1). With regard to the two of three studies reporting a positive association with heart rate, the ISA concluded that "further research is warranted" to corroborate the results, while the larger number of studies for heart rate variability parameters is characterized as having mixed associations (ISA, p. 5–15). Additionally, of the two studies of electrocardiogram changes indicative of ischemic events (ISA, section 5.2.1.2), one found no association and, in the other study, the association with CO did not remain statistically significant in multipollutant models, unlike the association with black carbon in that study (ISA, p. 5–16). A limited number of epidemiological studies (Bell *et al.,* 2009; Linn *et al.,* 2000) have investigated hospital admissions for stroke (including both hemorrhagic and ischemic forms) and generally report small or no associations with ambient CO concentrations (ISA, section 5.2.1.9, Table 5–8 and Figure 5–3).

At the time of the last review, there was evidence for effects other than cardiovascular morbidity, including neurological, respiratory and developmental effects. Evidence for these effects includes the following.

- With regard to neurological effects, acute exposures to CO have long been known to induce CNS effects such as those observed with CO poisoning, although limited and equivocal evidence available at the time of the last review included indications of some neurobehavioral effects to result from CO exposures resulting in a range of 5–20% COHb (2000 AQCD, section 6.3.2). No additional clinical or epidemiological studies are now available that investigated such effects of CO at ambient levels (ISA, section 5.3).
- With regard to potential effects of CO on birth outcomes and developmental effects, the potential vulnerability of the fetus and very young infant to CO was recognized during the 1994 review and in the 2000 AQCD. The CO-specific evidence available, however, included limited epidemiological analyses focused primarily on very high CO exposures associated with maternal smoking, and animal studies involving very high CO exposures (USEPA, 1992; 2000 AQCD). The 2000 AQCD concluded that typical ambient CO levels were unlikely to cause increased fetal risk (2000 AQCD, p. 6–44). The current review includes additional epidemiological and animal toxicological studies. The currently available evidence includes limited but suggestive epidemiologic evidence for a CO-induced effect on preterm-birth, birth defects, decrease in birth weight, other measures of fetal growth, and infant mortality (ISA, section 5.4.3). The available animal toxicological studies provide some support and coherence for these birth and developmental outcomes at higher than ambient exposures,[23] although a clear understanding of the mechanisms underlying potential reproductive and developmental effects is still lacking (ISA, section 2.5.3).
- With regard to respiratory effects, the 2000 AQCD concluded it unlikely that CO has direct effects on lung tissue, except at extremely high concentrations (2000 AQCD, p. 6–45). There is currently limited, suggestive evidence of an association between short-term exposure to CO and respiratory-related outcomes. Only preliminary evidence is available, however, regarding a mechanism that could provide plausibility for CO-induced effects (ISA, section 5.5.5.1).

Thus, while there is some additional evidence on neurological, respiratory and developmental effects, it remains limited.

In summary, rather than altering conclusions from the previous review, the current evidence provides continued support and some additional strength to the previous conclusions regarding the health effects associated with exposure to CO and continues to indicate cardiovascular effects, particularly effects related to the role of CO in limiting oxygen availability, as those of greatest concern at low exposures.

3. At-Risk Populations

In identifying population groups or life stages at greatest risk for health risk from a specific pollutant, the terms susceptibility, vulnerability, sensitivity, and at-risk are commonly employed. The definition for these terms sometimes varies, but in most instances "susceptibility" refers to biological or intrinsic factors (*e.g.,* lifestage, gender) while "vulnerability" refers to nonbiological or extrinsic factors (*e.g.,* visiting a high-altitude location, medication use). Additionally, in some cases, the terms "at-risk" and sensitive have been used to encompass both of these concepts. At times, however, factors of "susceptibility" and "vulnerability" are intertwined and are difficult to distinguish. In the ISA for this review, the term susceptibility has been used broadly to recognize populations that have a greater likelihood of experiencing effects related to ambient CO exposure, such that use of the term susceptible populations in the ISA is defined as follows (ISA, section 5.7, p. 5–115):

> Populations that have a greater likelihood of experiencing health effects related to exposure to an air pollutant (*e.g.,* CO) due to a variety of factors including, but not limited to: genetic or developmental factors, race, gender, lifestage, lifestyle (*e.g.,* smoking status and nutrition) or preexisting disease, as well as population-level factors that can increase an individual's exposure to an air pollutant (*e.g.,* CO) such as socioeconomic status [SES], which encompasses reduced access to health care, low educational attainment, residential location, and other factors

Thus, susceptible populations are at greater risk of CO effects and are also referred to as *at-risk* in the corresponding discussion in the REA and Policy Assessment and the summary below.

The current evidence, while much expanded in a number of ways, continues to support the conclusions from the previous review regarding susceptible populations for exposure to ambient CO. In the AQCD for the review completed in 1994 and in the 2000 AQCD, the evidence best supported the identification of patients with CAD as a population at increased risk from low levels of CO (USEPA, 1992; 2000 AQCD). Other groups were also recognized as potentially susceptible in the 2000 AQCD based on consideration of the clinical evidence and theoretical work, as well as laboratory animal research (2000 AQCD, p. 7–6). These include fetuses and young infants; pregnant women; the elderly, especially those with compromised cardiovascular function; people with conditions affecting oxygen absorption, blood flow, oxygen carrying capacity or transport; people using drugs with central nervous system depressant properties or exposed to chemical substances that increase endogenous formation of CO; and people who have not adapted to high altitude and are exposed to a combination of high altitude and CO. For these potentially susceptible groups, little empirical evidence was available by which to specify health effects associated with ambient or near-ambient CO exposures (2000 AQCD, p. 7–6).

As summarized in the Policy Assessment, based on the evidence from controlled human exposure studies also considered in the last review, and the

[23] The lowest exposures eliciting an effect in the animal studies were exposures of 22 hours per day over about 14 prenatal days at a concentration of 12 ppm (ISA, Table 5–17).

now much-expanded epidemiological evidence base which is coherent with the evidence from these studies, the population with pre-existing cardiovascular disease associated with limitation in oxygen availability continues to be the best characterized population at risk of adverse CO-induced effects, with CAD recognized as "the most important susceptibility characteristic for increased risk due to CO exposure" (ISA, section 2.6.1). An important factor determining the increased susceptibility of this population is their inability to compensate for the reduction in oxygen levels due to an already compromised cardiovascular system. Individuals with a healthy cardiovascular system (*i.e.,* with healthy coronary arteries) have operative physiologic compensatory mechanisms (*e.g.,* increased blood flow and oxygen extraction) for CO-induced hypoxia and are unlikely to be at increased risk of CO-induced effects (ISA, p. 2–10).[24] In addition, the high oxygen consumption of the heart, together with the inability to compensate for the hypoxic effects of CO, make the cardiac muscle of a person suffering with CAD a critical target for the hypoxic effects of CO.

In the Integrated Science Assessment for the current review, recognition of susceptibility of the population with pre-existing cardiovascular disease, such as CAD, is supported by the expanded epidemiological database, which includes a number of studies reporting significant increases in hospital admissions for IHD, angina and MI in relation to CO exposures (ISA, section 2.7). Further support is provided by epidemiologic studies (Mann *et al.,* 2002; and Peel *et al.,* 2007) of increased hospital admissions and emergency department visits for IHD among individuals with secondary diagnoses for other cardiovascular outcomes including arrhythmia and congestive heart failure (ISA, section 5.7), and toxicological studies reporting altered cardiac outcomes in animal models of cardiovascular disease (ISA, section 5.2.1.9).

Cardiovascular disease comprises many types of medical disorders, including heart disease, cerebrovascular disease (*e.g.,* stroke), hypertension (high blood pressure), and peripheral vascular diseases. Heart disease, in turn, comprises several types of disorders, including ischemic heart disease (CHD or CAD, myocardial infarction, angina), congestive heart failure, and disturbances in cardiac rhythm (2000 AQCD, section 7.7.2.1). Types of cardiovascular disease other than those discussed above may also contribute to increased susceptibility to the adverse effects of low levels of CO (ISA, section 5.7.1.1). For example, some evidence with regard to other types of cardiovascular disease such as congestive heart failure, arrhythmia, and non-specific cardiovascular disease, although more limited for peripheral vascular and cerebrovascular disease, indicates that "the continuous nature of the progression of CAD and its close relationship with other forms of cardiovascular disease suggest that a larger population than just those individuals with a prior diagnosis of CAD may be susceptible to health effects from CO exposure" (ISA, p. 5–117).

Although there were little experimental data available at the time of the last review to adequately characterize specific health effects of CO at ambient levels for other potentially at-risk populations, several other populations were identified as being potentially more at risk of CO-induced effects due to a number of factors. These factors include pre-existing diseases that could inherently decrease oxygen availability to tissues, lifestage vulnerabilities (*e.g.,* fetuses, young infants or newborns, the elderly), gender, lifestyle, medications or alterations in the physical environment (*e.g.,* increased altitude). This is consistent with the ISA conclusions in the current review which recognize other populations that may be potentially susceptible to the effects of CO as including: Those with other pre-existing diseases that may have already limited oxygen availability or increased COHb production or levels, such as people with obstructive lung diseases, diabetes and anemia; older adults; fetuses during critical phases of development and young infants or newborns; those who spend a substantial time on or near heavily traveled roadways; visitors to high-altitude locations; and people ingesting medications and other substances that enhance endogenous or metabolic CO formation (ISA, section 2.6.1). In recognizing the potential susceptibility of these populations, the Policy Assessment also noted the lack of information on specific COHb levels that may be associated with health effects in these other groups and the nature of those effects, as well as a way to relate the specific evidence available for the CAD population to these other populations (PA, section 2.2.1).

The current evidence continues to support the identification of people with cardiovascular disease as having susceptibility to CO-induced health effects (ISA, 2–12), with those having CAD as the population with the best characterized susceptibility to CO-induced health effects (ISA, sections 5.7.1.1 and 5.7.8).[25] An important susceptibility consideration for this population is the inability to compensate for CO-induced hypoxia since individuals with CAD have an already compromised cardiovascular system. Included in this susceptible population are those with angina pectoris (cardiac chest pain), those who have experienced a heart attack, and those with silent ischemia or undiagnosed IHD (AHA, 2003). People with other cardiovascular diseases, particularly heart diseases, are also at risk of CO-induced health effects. We also recognize other populations potentially susceptible to CO-induced effects, most particularly those with other pre-existing diseases that cause limited oxygen availability, increased COHb levels, or increased endogenous CO production, such as people with obstructive lung diseases, diabetes and anemia; however, information characterizing susceptibility for this population is limited.

4. Potential Impacts on Public Health

In light of the evidence described above with regard to factors contributing to greater susceptibility to health effects of ambient CO, this section, drawing from the Integrated Science Assessment and discussion in the Policy Assessment, discusses the health significance of the effects occurring with the lowest relevant (short-term) exposures to ambient CO and the size of the at-risk populations in the U.S. These considerations are important elements in the characterization of potential public health impacts associated with exposure to ambient CO.

We first consider the effects identified by the evidence at the lowest studied short-term exposures. As discussed in section II.B.2 above, the study by Allred *et al.,* (1989a, 1989b, 1991) indicates that increases in blood COHb in response to 1-hour CO exposures

[24] The other well-studied individuals at the time of the last review were healthy male adults that experienced decreased exercise duration at similar COHb levels during short term maximal exercise. This population was of lesser concern since it represented a smaller sensitive group, and potentially limited to individuals that would engage in vigorous exercise such as competing athletes (1991 AQCD, section 10.3.2).

[25] As recognized in the ISA, "Although the weight of evidence varies depending on the factor being evaluated, the clearest evidence indicates that individuals with CAD are most susceptible to an increase in CO-induced health effects" (ISA, p. 2–12).

produce evidence of myocardial ischemia in CAD patients with reproducible exercise-induced angina. At a study group average COHb level of 2–2.4%, the statistically significant reduction in the time to exercise-induced markers of myocardial ischemia in CAD patients was 4–5% on average (approximately 30 seconds), with larger reductions observed at the higher studied COHb level. In discussing public health implications of the observed responses, the study authors noted that the responses observed at the studied COHb levels were similar to those considered clinically significant when evaluating medications to treat angina from coronary artery disease (Allred *et al.,* 1989a, 1991). The independent review panel for the study further noted that frequent encounters in "everyday life" with increased COHb levels on the order of those tested in the study might be expected to limit activity and affect quality of life (Allred *et al.,* 1989b, pp. 38, 92–94; 1991 AQCD, p. 10–35).

In the review completed in 1994, the body of evidence that demonstrated cardiovascular effects in CAD patients exposed to CO was given primary consideration, with the Administrator judging that "cardiovascular effects, as measured by decreased time to onset of angina pain and by decreased time to onset of significant ST-segment depression, are the health effects of greatest concern, which clearly have been associated with CO exposures at levels observed in the ambient air" (59 FR 38913). Additionally, as discussed in section II.B.2 above, a dose-response relationship has been documented for COHb resulting from brief, elevated CO exposures in persons with pre-existing CAD, with no evidence of threshold (59 FR 38910; ISA, section 5.2.4; Allred *et al.,* 1989a, 1989b, 1991).

In the 1994 review decision (as discussed in section II.D.1.a below), less significance was ascribed to the effects at the lower COHb level assessed in the Allred *et al.,* study (1989a, 1989b, 1991), which were described to be of less certain clinical importance, than effects reported from short-term CO exposure studies that assessed higher COHb levels (59 FR 38913–38914). In the current review of the evidence, the ISA describes the physiological significance of the changes at the lowest tested dose level (*e.g.,* 2% COHb from Allred *et al.,* 1989b) as unclear, additionally noting that variability in severity of disease among individuals with CAD is likely to influence the critical level of COHb which leads to adverse cardiovascular effects (ISA, p. 2–6).

In considering potential public health impacts of CO in ambient air, we also consider the size of the at-risk populations. The population with CAD is well recognized as susceptible to increased risk of CO-induced health effects (ISA, sections 5.7.1.1 and 5.7.8). The 2007 estimate from the National Health Interview Survey (NHIS) performed by the U.S. Centers for Disease Control of the size of the U.S. population with coronary heart disease, angina pectoris (cardiac chest pain) or who have experienced a heart attack (ISA, Table 5–26) is 13.7 million people (ISA, pp. 5–117). Further, there are estimated to be three to four million additional people with silent ischemia or undiagnosed IHD (AHA, 2003). In combination, this represents a large population that is more susceptible to ambient CO exposure when compared to the general population (ISA, section 5.7).

In addition to the population with diagnosed and undiagnosed CAD, the ISA notes the size of the larger population of people with all types of heart disease (HD), which may also be at increased risk of CO-induced health effects (ISA, section 2.6.1). Within this broader group, implications of CO exposures are more significant for those persons for whom their disease state affects their ability to compensate for the hypoxia-related effects of CO (ISA, section 4.4.4). The NHIS estimates for 2007 indicate there is a total of approximately 25 million people with heart disease of any type (ISA, Table 5–26).

Other populations potentially susceptible to the effects of CO include people with chronic obstructive pulmonary disease, diabetes and anemia, as well as older adults and fetuses during critical phases of development (as discussed in section II.B.3 above). In considering potential impacts on such populations, we recognize that the evidence is limited or lacking with regard to effects of CO at ambient levels, and associated exposures and COHb levels, while providing no indication of susceptibility to ambient CO greater than that of CHD and HD populations.

C. Human Exposure and Dose Assessment

Our consideration of the scientific evidence in the current review, as at the time of the last review (summarized in section II.D.1 below), is informed by results from a quantitative analysis of estimated population exposure and resultant COHb levels. This analysis provides estimates of the percentages of simulated at-risk populations expected to experience daily maximum COHb levels at or above a range of benchmark levels under varying air quality scenarios (*e.g.,* just meeting the current or alternative standards). The benchmark COHb levels were identified based on consideration of the evidence discussed in section II.B above. The following subsections summarize the design and methods of the quantitative assessment (section II.C.1) and the important uncertainties associated with these analyses (section II.C.2). The results of the analyses, as they relate to considerations of the adequacy of the current standards, are discussed in section II.D.2 below.

1. Summary of Design Aspects

In this section, we provide a summary of key aspects of the assessment conducted for this review, including the study areas and air quality scenarios investigated, modeling tools used, at-risk populations simulated, and COHb benchmark levels of interest. The assessment is described in detail in the REA and summarized in the PA (section 2.2.2).

The assessment estimated CO exposure and associated COHb levels in simulated at-risk populations in two urban study areas in Denver and Los Angeles, in which current ambient CO concentrations are below the current standards. We selected these areas because: (1) Areas of both cities have been included in prior CO NAAQS exposure assessments and thus serve as an important connection with past assessments; (2) historically, they have generally had the highest ambient CO concentrations among urban areas in the U.S.; and (3) Denver is at high altitude and represents an important risk scenario due to the potential increased susceptibility to CO exposure associated with high altitudes. In addition, of 10 urban areas across the continental U.S. selected for detailed air quality analysis in the ISA and having ambient monitors meeting a 75% completeness criterion, the two study area locations were ranked first (Los Angeles) and second (Denver) regarding the percentage of elderly population within 5, 10, and 15 km of monitor locations, and ranked first (Los Angeles) and fifth (Denver) regarding number of 1- and 8-hour daily maximum CO concentration measurements (ISA, section 3.5.1.1).

Estimates were developed for exposures to ambient CO associated with current "as is" conditions (2006 air quality) and also for higher ambient CO concentrations associated with air quality conditions simulated to just

meet the current 8-hour standard,[26] as well as for air quality conditions simulated to just meet several alternative standards. Although we consider it unlikely that air concentrations in many urban areas across the U.S. that are currently well below the current standards would increase to just meet the 8-hour standard, we recognize the potential for CO concentrations in some areas currently below the standard to increase to just meet the standard. We additionally recognize that this simulation can provide useful information in evaluating the current standard. Accordingly, we simulated conditions of increased CO concentrations that just meet the current 8-hour standard in the two study areas. In so doing, we recognize the uncertainty associated with simulating this hypothetical profile of higher CO concentrations that just meet the current 8-hour standard. We note, however, that an analysis of the ratios of 1-hour to 8-hour design value metrics based on 2009 ambient CO concentrations in U.S. locations indicates that the relationships between design values for the two study areas under the air quality conditions simulated to just meet the current 8-hour standard fall well within the 2009 national distribution of such ratios (Policy Assessment, section 2.2.2).[27]

The exposure and dose modeling for the assessment, presented in detail in the REA, relied on version 4.3 of EPA's Air Pollutant Exposure model (APEX4.3), which estimates human exposure using a stochastic, event-based microenvironmental approach (REA, chapter 4). This model has a history of application, evaluation, and progressive model development in estimating human exposure and dose for several NAAQS reviews, including CO, ozone (O_3), nitrogen dioxide (NO_2), and sulfur dioxide (SO_2). As described in section II.D.1 below, the review of the CO standards completed in 1994 relied on population exposure and dose estimates generated from the probabilistic NAAQS exposure model (pNEM), a model that, among other differences from the current modeling approach with APEX4.3, employed a cohort-based approach (Johnson *et al.,* 1992; U.S. EPA, 1992).[28] [29] Each of the model developments since the use of pNEM in that review have been designed to allow APEX to better represent human behavior, human physiology, and microenvironmental concentrations and to more accurately estimate variability in CO exposures and COHb levels (REA, chapter 4).[30]

As used in the current assessment, APEX probabilistically generates a sample of hypothetical individuals from an actual population database and simulates each individual's movements through time and space (*e.g.,* indoors at home, inside vehicles) to estimate his or her exposure to ambient CO (REA, chapter 4). The individual's movements are simulated based on data available from recent activity pattern surveys (CHAD [31] now has about 34,000 person-days of data) and the most recent U.S. census data on population demographics and home-to-workplace commutes. Based on exposure concentrations, minute-by-minute activity levels, and physiological characteristics of the simulated individuals (*see* REA, chapters 4 and 5), APEX estimates the level of COHb in the blood for each individual at the end of each hour based on a nonlinear solution to the Coburn-Forster-Kane equation (REA, section 4.4.7). These results across each simulated individual were then summarized in the REA and discussed in the Policy Assessment in terms of the percent of the simulated at-risk populations expected to experience one or more occurrences of daily maximum end-of-hour COHb levels of interest.

As discussed in section II.B above, people with cardiovascular disease are the population of primary focus in this review, and more specifically, as described in the ISA, coronary artery disease, also known as coronary heart disease, is the "most important susceptibility characteristic for increased risk due to CO exposure" (ISA, p. 2–11). Controlled human exposure studies have provided quantitative COHb dose-response information for this specific population with regard to effects on markers of myocardial ischemia. Accordingly, based on the current evidence with regard to quantitative information of COHb levels and association with specific health effects, the at-risk populations simulated in the quantitative assessment were (1) adults with CHD (also known as ischemic heart disease [IHD] or CAD), both diagnosed and undiagnosed, and (2) adults with any heart diseases, including undiagnosed ischemia.[32] Evidence characterizing the nature of specific health effects of CO in other populations is limited and does not include specific COHb levels related to health effects in those groups. As a result, the quantitative assessment does not develop separate quantitative dose estimates for populations other than those with CHD or HD.

In representing the two at-risk populations and their activity patterns, individuals were simulated based on age and gender distributions for CHD and HD populations. These distributions were developed by augmenting the prevalence estimates provided by the National Health Interview Survey for adults with CAD and adults with heart diseases of any type (HD) with estimates of undiagnosed ischemia (as described in section 5.5.1 of the REA). The undiagnosed ischemia estimates were developed based on two assumptions: (1) There are 3.5 million persons in U.S. with undiagnosed IHD (AHA, 2003) and (2) persons with undiagnosed IHD are distributed within the population in the same manner as persons with diagnosed IHD (REA, section 5.5.1).

APEX simulations performed for this review focused on exposures to ambient

[26] As noted elsewhere, the 8-hour standard is the controlling standard for ambient CO concentrations.

[27] More specifically, the ratio of the 1-hour design value to the 8-hour design value for the Los Angeles study area corresponds to approximately the 25th percentile of U.S. counties in 2009 and the ratio for the Denver study area corresponds to approximately the 75th percentile of U.S. counties in 2009. Under "as is" conditions the ratios for these two study areas correspond to approximately the 40th percentile of the 2009 national distribution (Policy Assessment, section 2.2.2).

[28] When using the cohort approach, each cohort is assumed to contain persons with identical exposures during the specified exposure period. Thus, variability in exposure will be attributed to differences in how the cohorts are defined, not necessarily reflecting differences in how individuals might be exposed in a population. In the assessment for the review completed in 1994, a total of 420 cohorts were used to estimate population exposure based on selected demographic information (11 groups using age, gender, work status), residential location, work location, and presence of indoor gas stoves (Johnson, *et al.,* 1992; USEPA, 1992).

[29] The use of pNEM in the prior review also (1) relied on a limited set of activity pattern data (approximately 3,600 person-days), (2) used four broadly defined categories to estimate breathing rates, and (3) implemented a geodesic distance range methodology to approximate workplace commutes (Johnson *et al.,* 1992; U.S. EPA, 1992). Each of these approaches used by pNEM, while appropriate given the data available at that time, would tend to limit the ability to accurately model expected variability in the population exposure and dose distributions.

[30] APEX4.3 includes new algorithms to (1) simulate longitudinal activity sequences and exposure profiles for individuals, (2) estimate activity-specific minute-by-minute oxygen consumption and breathing rates, (3) address spatial variability in home and work-tract ambient concentrations for commuters, and (4) estimate event-based microenvironmental concentrations (PA, section 2.2.2).

[31] CHAD is EPA's Comprehensive Human Activity Database which provides input data for APEX model simulations (REA, sections 4.3 and 4.4).

[32] As described in section 1.2 above, this is the same population group that was the focus of the CO NAAQS exposure/dose assessments conducted previously (*e.g.,* USEPA, 1992; Johnson *et al.,* 2000).

CO occurring in eight microenvironments,[33] absent any contribution to microenvironment concentrations from indoor (nonambient) CO sources. As noted in section II.B.1 above, however, where present, indoor sources, including gas stoves, attached garages and tobacco smoke, can also be important contributors to total CO exposure (ISA, sections 3.6.1 and 3.6.5). Previous assessments, that have included modeling simulations both with and without certain indoor sources, indicated that the impact of such sources can be substantial with regard to the portion of the at-risk population experiencing higher exposures and COHb levels (Johnson *et al.,* 2000). While we are limited with regard to information regarding CO emissions from indoor sources today and how they may differ from the time of the 2000 assessment, we note that ambient contributions have notably declined, and indoor source contributions from some sources may also have declined. Thus, as indicated in the Policy Assessment, we have no firm basis to conclude a different role for indoor sources today with regard to contribution to population CO exposure and COHb levels.

The REA developed COHb estimates for the simulated at-risk populations with attention to both COHb in absolute terms and in terms of the contribution to absolute levels associated with ambient CO exposures. Absolute COHb refers to the REA estimates of COHb levels resulting from endogenously produced CO and exposure to ambient CO (in the absence of any nonambient sources). The additional REA estimates of ambient CO exposure contribution to COHb levels were calculated by subtracting COHb estimates obtained in the absence of CO exposure—*i.e.,* that due to endogenous CO production alone (*see* REA, Appendix B.6)—from the corresponding end-of-hour absolute COHb estimates for each simulated individual. Thus, the REA reports estimates of the maximum end-of-hour ambient contributions across the simulated year, in addition to the maximum absolute end-of hour COHb levels.

As discussed in the Policy Assessment (section 2.2.2), the absence of indoor (nonambient) sources in the REA simulations is expected to result in simulated individuals with somewhat higher estimates of the contribution of short-duration increases in ambient CO exposure to COHb levels (ambient contribution) than would be expected for individuals in situations where the presence of nonambient sources contributes to higher baseline COHb levels (*i.e.,* COHb prior to a short-duration exposure event). The amount by which the ambient contribution estimates might differ is influenced by the magnitude of nonambient-source exposures and associated baseline COHb levels. One reason for this is that in the presence of indoor sources, baseline COHb levels will be higher for a given population group than COHb levels for that group arising solely from endogenous CO in the absence of any exposure, which is the "baseline" for the REA estimates of ambient contribution to COHb (REA, appendix B.6).[34] As CO uptake depends in part on the amount of CO already present in the blood (and the blood-air CO concentration gradient), in general, a higher baseline COHb, with all other variables unchanged, will lead to relatively lesser uptake of CO from short-duration exposures (ISA, section 4.3; AQCD, section 5.2). Additionally, as is indicated by the REA estimates, the attainment of a particular dose level is driven largely by short-term (and often high concentration) exposure events. This is because of the relatively rapid uptake of CO into a person's blood, as demonstrated by the pattern in the REA time-series of ambient concentrations, microenvironmental exposures, and COHb levels (REA, Appendix B, Figure B–2). For example the time lag for response of an individual's COHb levels to variable ambient CO (and hence exposure) concentrations may be only a few hours (*e.g.,* REA, Figure B–2).

In considering the REA dose estimates in the Policy Assessment, as described in section II.D.2 below, staff considered estimates of the portion of the simulated at-risk populations estimated to experience daily maximum end-of-hour absolute COHb levels above identified benchmark levels (at least once and on multiple occasions), as well as estimates of the percentage of population person-days (the only metric available from the modeling for the 1994 review), and also population estimates of daily maximum ambient contribution to end-of-hour COHb levels. In identifying COHb benchmark levels of interest, primary attention was given to the multi-laboratory study in which COHb was analyzed by the more accurate GC method (Allred *et al.,* 1989a, 1989b, 1991) discussed in section II.B.2 above. The REA identified a series of benchmark levels for considering estimates of absolute COHb: 1.5%, 2.0%, 2.5% and 3% COHb (REA, section 2.6). This range includes the range of COHb levels identified as levels of concern in the review completed in 1994 (2.0 to 2.9%) and the level given particular focus (2.1%) at that time, as described in section 2.1.1 above (USEPA, 1992; 59 FR 48914). Selection of this range of benchmark levels is based on consideration of the evidence from controlled human exposure studies of subjects with CAD (discussed in section 2.2.1 above), with the lower end of the range extending below the lowest mean COHb level resulting from controlled exposure to CO in the clinical evidence (*e.g.,* 2.0% post-exercise in Allred *et al.,* 1989b). The extension of this range reflects a number of considerations, including: (1) Comments from the CASAC CO panel on the draft Scope and Methods Plan (Brain, 2009); (2) consideration of the uncertainties regarding the actual COHb levels experienced in the controlled human exposure studies; (3) that these studies did not include individuals with most severe cardiovascular disease;[35] (4) the lack of studies that have evaluated effects of experimentally controlled short-term CO exposures resulting in mean COHb levels below 2.0–2.4%; and (5) the lack of evidence of a threshold at the increased COHb levels evaluated. We note that CASAC comments on the first draft REA recommended the addition of a benchmark at 1.0% COHb and results are presented for this COHb level in the REA. Given that this level overlaps with the upper part of the range of endogenous levels in healthy individuals as characterized in the ISA (ISA, p. 2–6), and is within the upper

[33] The 8 microenvironments modeled in the REA comprised a range of indoor and outdoor locations including residences as well as motor vehicle-related locations such as inside vehicles, and public parking and fueling facilities, where the highest exposures were estimated (REA, sections 5.9 and 6.1).

[34] As they result only from endogenous CO formation, the REA "baseline" COHb levels would also be expected to be, and generally are, lower than the initial, pre-exposure, COHb levels of subjects in the controlled exposure studies. REA estimates of endogenously formed COHb averaged about 0.3% across the simulated populations, with slightly higher levels in the higher altitude Denver study area (REA, pp. B–21 to B–22). Levels in the Denver study population ranged from 0.1 to 1.1% COHb, with an average of 0.31%, while levels for Los Angeles ranged from 0.1 to 0.7% with an average of 0.27% COHb. Initial, pre-exposure COHb levels in the subjects of the Allred *et al.* study (1989b), which reflect the subjects pre-study exposure history as well as endogenous CO formation, ranged from 0.2 to 1.1%, averaging about 0.6% COHb.

[35] Although the CAD patients evaluated in the controlled human exposure study by Allred *et al.* (1989a, 1989b, 1991) are not necessarily representative of the most sensitive population, the level of disease in these individuals ranged from moderate to severe, with the majority either having a history of myocardial infarction or having ≥70% occlusion of one or more of the coronary arteries (ISA, p. 5–43).

part of the range of baseline COHb levels in the study by Allred *et al* (1989b, Appendix B), however, we considered that it may not be appropriate to place weight on it as a benchmark level and accordingly have not focused on interpreting absolute COHb estimates at and below this level in the discussion below. Additionally we note the REA estimates indicating that, in the absence of CO exposure, approximately 0.5% to 2% of the simulated at-risk populations in the two study areas were estimated to experience a single daily maximum end-of-hour COHb level, arising solely from endogenous CO production, at or above 1% (REA, Appendix B, Figure B–3).

The Policy Assessment also considered the evidence from controlled human exposure studies in interpreting the REA estimates of maximum ambient exposure contributions to end-of-hour COHb levels (described in sections 4.4.7 and 5.10.3 of the REA). As discussed above, the study by Allred *et al* (1989a, 1989b, 1991) observed reduced time to exercise-induced angina and ST-segment change in groups of subjects with pre-existing CAD for which controlled CO exposures increased their COHb levels by on average 1.4–1.8% and 3.2–4.0% COHb from initial COHb levels of on average 0.6% COHb (ISA, section 5.2.4; Allred *et al.,* 1989a, 1989b, 1991). The study reported a dose-response relationship in terms of time reduction per 1% increase in COHb concentration based on analysis of the full data set across both exposure groups. For purposes of the discussion in this document, we have presented the percentage of the simulated at-risk populations estimated to experience maximum ambient contribution to end-of-hour COHb levels above and below a range of levels extending from 1.4 to 2.0%. As noted above, the Policy Assessment recognized distinctions between the REA "baseline" (arising from prior ambient exposure and endogenous CO production) and the pre-exposure COHb levels in the controlled human exposure study (arising from ambient and nonambient exposure history, as well as from endogenous CO production), and also noted the impact of "baseline" COHb levels on COHb levels occurring in response to short ambient CO exposure events such as those simulated in the REA as discussed above.

2. Key Limitations and Uncertainties

Numerous improvements have been made over the last decade that have reduced the uncertainties associated with the models used to estimate COHb levels resulting from ambient CO exposures under different air quality conditions, including those associated with just meeting the current CO NAAQS (REA, section 4.3). This progression in exposure model development has led to the model currently used by the Agency (APEX4.3), which has an enhanced capacity to estimate population CO exposures and more accurately predicts COHb levels in persons exposed to CO. Our application of APEX4.3 in this review, using updated data and new algorithms to estimate exposures and doses experienced by individuals, better represents the variability in population exposure and COHb dose levels than the model version used in previous CO assessments.[36] However, while APEX 4.3 is greatly improved when compared with previously used exposure models, its application is still limited with regard to data to inform our understanding of spatial relationships in ambient CO concentrations and within microenvironments of particular interest. Further information regarding model improvements and remaining exposure modeling uncertainties are summarized in section 2.2.2 of the Policy Assessment and described in detail in chapter 7 of the REA.

The uncertainties associated with the quantitative estimates of exposure and dose were considered using a generally qualitative approach intended to identify and compare the relative impact that important sources of uncertainty may have on the estimated potential health effect endpoints (*i.e.,* estimates of the maximum end-of-hour COHb levels in the simulated at-risk population). The approach used was developed using World Health Organization (WHO) guidelines on conducting a qualitative uncertainty characterization (WHO, 2008) and was also applied in the most recent NO_2 (USEPA, 2008c) and SO_2 NAAQS reviews (USEPA, 2009e). A qualitative approach was employed given the extremely limited data available to inform probabilistic uncertainty analyses. The qualitative approach used varies from that of WHO (2008) in that a greater focus of the characterization performed was placed on evaluating the direction and the magnitude of the uncertainty; that is, qualitatively rating how the source of uncertainty, in the presence of alternative information, may affect the estimated exposures and health risk results. Additionally, consistent with the WHO (2008) guidance, the REA discusses the uncertainty in the knowledge base (*e.g.,* the accuracy of the data used, acknowledgement of data gaps) and decisions made where possible (*e.g.,* selection of particular model forms), though qualitative ratings were assigned only to uncertainty regarding the knowledge base.

Sixteen separate sources of uncertainty associated with four main components of the assessment were identified. By comparing judgments made regarding the magnitude and direction of influence that the identified sources have on estimated exposure concentrations and dose levels and the existing uncertainties in the knowledge base, seven sources of uncertainty (*i.e.,* the spatial and temporal representation of ambient monitoring data, historical data used in representing alternative air quality scenarios, activity pattern database, longitudinal profile algorithm, microenvironmental algorithm and input data, and physiological factors) were identified as the most important areas of uncertainty in this assessment (PA, section 2.2.2). Taking into consideration improvements in the model algorithms and data since the last review, and having identified and characterized these uncertainties here, the Policy Assessment concludes that the estimates associated with the current analysis, at a minimum, better reflect the full distribution of exposures and dose as compared to results from the 1992 analysis. As noted in the Policy Assessment, however, potentially greater uncertainty remains in our characterization of the upper and lower percentiles of the distribution of population exposures and COHb dose levels relative to that of other portions of the respective distribution. When considering the overall quality of the current exposure modeling approach, the algorithms, and input data used, alongside the identified limitations and uncertainties, the REA and Policy Assessment conclude that the quantitative assessment provides reasonable estimates of CO exposure and COHb dose for the simulated population the assessment is intended to represent (*i.e.,* the population residing within the urban core of each study area).

The Policy Assessment additionally notes the impact on the REA dose estimates for ambient CO contribution to COHb of the lack of nonambient sources in the model simulations. This aspect of the assessment design may contribute to higher estimates of the contribution of short-duration ambient CO exposures to total COHb than would

[36] APEX4.3 provides estimates for percent of population projected to experience a single or multiple occurrences of a daily maximum COHb level above the various benchmark levels, as well as percent of person-days.

result from simulations that include the range of commonly encountered CO sources beyond just those contributing to ambient air CO concentrations. Although the specific quantitative impact of this on estimates of population percentages discussed in this document is unknown, consideration of COHb estimates from the 2000 assessment indicates a potential for the inclusion of nonambient sources to appreciably affect absolute COHb (REA, section 6.3) and accordingly implies the potential, where present, for an impact on overall ambient contribution to a person's COHb level.

D. Conclusions on Adequacy of the Current Standards

The initial issue to be addressed in the current review of the primary CO standards is whether, in view of the advances in scientific knowledge and additional information now available, the existing standards should be retained or revised. In evaluating whether it is appropriate to retain or revise the current standards, the Administrator builds upon the last review and reflects the broader body of evidence and information now available. The Administrator has taken into account both evidence-based and quantitative exposure- and risk-based considerations in developing conclusions on the adequacy of the current primary CO standards. Evidence-based considerations include the assessment of evidence from controlled human exposure, toxicological and epidemiological studies evaluating short- or long-term exposures to CO, with supporting evidence related to dosimetry and potential mode of action, as well as the integration of evidence across each of these disciplines, and with a focus on policy-relevant considerations as discussed in the PA. The exposure/dose-based considerations draw from the results of the quantitative analyses presented in the REA and summarized in section II.C above, and consideration of those results in the PA. More specifically, estimates of the magnitude of ambient CO-related exposures and associated COHb levels associated with just meeting the current primary CO NAAQS have been considered. Together the evidence-based and risk-based considerations have informed the Administrator's proposed conclusions related to the adequacy of the current CO standards in light of the currently available scientific evidence.

1. Approach

In considering the evidence and quantitative exposure and dose estimates with regard to judgments on the adequacy afforded by the current standards, we note that the final decision is largely a public health policy judgment. A final decision must draw upon scientific information and analyses about health effects and risks, as well as judgments about how to consider the range and magnitude of uncertainties that are inherent in the scientific evidence and analyses. Our approach to informing these judgments, discussed more fully below, is based on the recognition that the available health effects evidence generally reflects a continuum, consisting of ambient levels at which scientists generally agree that health effects are likely to occur, through lower levels at which the likelihood and magnitude of the response become increasingly uncertain. This approach is consistent with the requirements of the NAAQS provisions of the Act and with how EPA and the courts have historically interpreted the Act. These provisions require the Administrator to establish primary standards that, in the Administrator's judgment, are requisite to protect public health with an adequate margin of safety. In so doing, the Administrator seeks to establish standards that are neither more nor less stringent than necessary for this purpose. The Act does not require that primary standards be set at a zero-risk level, but rather at a level that avoids unacceptable risks to public health, including the health of sensitive groups.[37]

The following subsections include background information on the approach used in the previous review of the CO standards (section II.D.1.a) and also a description of the approach for the current review (section II.D.1.b).

a. Previous Reviews

The current primary standards for CO are set at 9 parts per million (ppm) as an 8-hour average and 35 ppm as a 1-hour average, neither to be exceeded more than once per year. These standards were initially set in 1971 to protect against the occurrence of carboxyhemoglobin (COHb) levels that may be associated with effects of concern (36 FR 8186). Reviews of these standards in the 1980s and early 1990s identified additional evidence regarding ambient CO, CO exposures, COHb levels, and associated health effects (USEPA, 1984a, 1984b; USEPA, 1991; USEPA, 1992; McClellan, 1991, 1992). Assessment of the evidence in those reviews, completed in 1985 and 1994, led the EPA to retain the existing primary standards without revision (50 FR 37484, 59 FR 38906).

The 1994 decision to retain the primary standards without revision was based on the evidence published through 1990 and reviewed in the 1991 AQCD (USEPA, 1991), the 1992 Staff Paper assessment of the policy-relevant information contained in the AQCD and the quantitative exposure assessment (USEPA, 1992), and the advice and recommendations of CASAC (McClellan 1991, 1992). At that time, as at the time of the first NAAQS review (50 FR 37484), COHb levels in blood were recognized as providing the most useful estimate of exogenous CO exposures and serving as the best biomarker of CO toxicity for ambient-level exposures to CO (59 FR 38909). Consequently, COHb levels were used as the indicator of health effects in the identification of health effect levels of concern for CO (59 FR 38909).

In reviewing the standards in 1994 the Administrator first recognized the need to determine the COHb levels of concern "taking into account a large and diverse health effects database." The more uncertain and less quantifiable evidence was taken into account to identify the lower end of this range to provide an adequate margin of safety for effects of clear concern. To consider ambient CO concentrations likely to result in COHb levels of concern, a model solution to the Coburn-Forster-Kane (CFK) differential equation was employed in the analysis of CO exposures expected to occur under air quality scenarios related to just meeting the current 8-hour CO NAAQS, the controlling standard (USEPA, 1992).[38] Key considerations in this approach are described below.

The assessment of the science that was presented in the 1991 AQCD (USEPA, 1991) indicated that CO is associated with effects in the cardiovascular system, central nervous system (CNS), and the developing fetus. Additionally, factors recognized as having the potential to alter the effects

[37] The sensitive population groups identified in a NAAQS review may (or may not) be comprised of low income or minority groups. Where low income/minority groups are among the sensitive groups, the rulemaking decision will be based on providing protection for these and other sensitive population groups. To the extent that low income/minority groups are not among the sensitive groups, a decision based on providing protection of the sensitive groups would be expected to provide protection for the low income/minority groups (as well as any other less sensitive population groups).

[38] Air quality analyses of CO levels in the U.S. consistently demonstrate that meeting the 8-hour standard results in 1-hour maximum concentrations well below the corresponding 1-hour standard.

of CO included exposures to other pollutants, some drugs and some environmental factors, such as altitude. Cardiovascular effects of CO, as measured by decreased time to onset of angina and to onset of significant electrocardiogram (ECG) ST-segment depression were judged by the Administrator to be "the health effects of greater concern, which clearly had been associated with CO exposures at levels observed in ambient air" (59 FR 38913).

Based on the consistent findings of response in patients with coronary artery disease across the controlled human exposure evidence (Adams *et al.,* 1988; Allred *et al.,* 1989a, 1989b, 1991; Anderson *et al.,* 1973; Kleinman *et al.,* 1989, 1998; Sheps *et al.,* 1987 [39]) and discussions of adverse health consequences in the 1991 AQCD and the 1992 Staff Paper,[40] at the CASAC meetings and in the July 1991 CASAC letter, the Administrator concluded that "CO exposures resulting in COHb levels of 2.9–3.0 percent (CO–Ox) or higher in persons with heart disease have the potential to increase the risk of decreased time to onset of angina pain and ST-segment depression" (59 FR 38913). While EPA and CASAC recognized the existence of a range of views among health professionals on the clinical significance of these responses, CASAC noted that the dominant view was that they should be considered "adverse or harbinger of adverse effect" (McClellan, 1991) and EPA recognized that it was "important that standards be set to appropriately reduce the risk of ambient exposures which produce COHb levels that could induce such potentially adverse effects" (59 FR 38913).

In further considering additional results from the controlled human exposure evidence, such as the results from Allred *et al.* (1989a, 1989b) at 2.0% COHb (using GC measurement) induced by short (approximately 1-hour) CO exposure, as well as other aspects of the available evidence and uncertainties regarding modeling estimates of COHb formation and human exposure to COHb levels in the population associated with attainment of a given CO NAAQS, the Administrator recognized the need to extend the range of COHb levels for consideration in evaluating whether the current CO standards provide an adequate margin of safety to those falling between 2.0 to 2.9% COHb (59 FR 38913). Factors considered in recognizing this margin of safety included the following (59 FR 38913).

- Uncertainty regarding the clinical importance of cardiovascular effects associated with exposures to CO that resulted in COHb levels of 2 to 3 percent. Although recognizing the possibility that there is no threshold for these effects even at lower COHb levels, the clinical importance of cardiovascular effects associated with short (approximately 1-hour) exposures to CO resulting in COHb levels as low as 2.0% COHb by GC (Allred *et al.,* 1989a,b) was described as "less certain" than effects noted for exposures contributing to higher COHb (CO–Ox) levels (59 FR 38913).
- Findings of short-term reduction in maximal work capacity measured in trained athletes exposed to CO at levels resulting in COHb levels of 2.3 to 7 percent.
- The potential that the most sensitive individuals have not been studied, the limited information regarding the effects of ambient CO in the developing fetus, and concern about visitors to high altitudes, individuals with anemia or respiratory disease, or the elderly.
- Potential for short term peak CO exposures to be responsible for impairments (impairment of visual perception, sensorimotor performance, vigilance or other CNS effects) which could be a matter of concern for complex activities such as driving a car, although these effects had not been demonstrated to be caused by CO concentrations in ambient air.
- Concern based on limited evidence for individuals exposed to CO concurrently with drugs (*e.g.,* alcohol), during heat stress, or co-exposure to other pollutants.
- Uncertainties, described as "large," that remained regarding modeling COHb formation and estimating human exposure to CO which could lead to overestimation of COHb levels in the population associated with attainment of a given CO NAAQS.
- Uncertainty associated with COHb measurements made using CO–Ox which may not reflect COHb levels in angina patients studied, thereby creating uncertainty in establishing a lowest effects level for CO.

Based on these considerations of the evidence, the Administrator identified a range of COHb levels for considering margin of safety, extending from 2.9% COHb (representing an increase of 1.5% above baseline when using CO–Ox measurements) at the upper end down to 2% at the lower end (59 FR 38913), and also concluded that "evaluation of the adequacy of the current standard should focus on reducing the number of individuals with cardiovascular disease from being exposed to CO levels in the ambient air that would result in COHb levels of 2.1 percent" (59 FR 38914). She additionally concluded that standards that "protect against COHb levels at the lower end of the range should provide an adequate margin of safety against effects of uncertain occurrence, as well as those of clear concern that have been associated with COHb levels in the upper-end of the range" (59 FR 38914).

To estimate CO exposures and resulting COHb levels that might be expected under air quality conditions that just met the current standards, an analysis of exposure and associated internal dose in terms of COHb levels in the population of interest in the city of Denver, Colorado was performed (59 FR 38906; USEPA, 1992). That analysis indicated that if the 9 ppm 8-hour standard were just met, the proportion of the nonsmoking population with cardiovascular disease experiencing a daily maximum 8-hour exposure at or above 9 ppm for 8 hours decreased by an order of magnitude or more as compared to the proportion under then-existing CO levels, down to less than 0.1 percent of the total person-days in that population. Further, upon meeting the 8-hour standard, EPA estimated that less than 0.1% of the nonsmoking cardiovascular-disease population would experience a COHb level greater than or equal to 2.1% and a smaller percentage of the at-risk population was estimated to exceed higher COHb levels (59 FR 38914).[41] Based on these estimates, the Administrator concluded that "relatively few people of the cardiovascular sensitive population group analyzed will experience COHb levels ≥ 2.1 percent when exposed to CO levels in absence of indoor sources when the current standards are attained." The analysis also took into account that certain indoor sources (*e.g.,* passive smoking, gas stove usage) contributed to total CO exposure and EPA recognized that such sources may be of concern for such high risk groups

[39] *See* footnote 15 above.

[40] Based on consideration of the key studies, including those two that investigated more than a single target COHb level, discussions in the 1991 AQCD and with CASAC, the 1992 Staff Paper recommended that "2.9–3.0% COHb (CO–Ox), representing an increase above initial COHb of 1.5 to 2.2% COHb, be considered a level of potential adversity for individuals at risk" (59 FR 38911; USEPA, 1992; USEPA, 1991, pp. 1–11 to 1–12; Allred *et al.,* 1989a, 1989b, 1991; Anderson *et al.,* 1973).

[41] In the 1992 assessment, the person-days (number of persons multiplied by the number of days per year exposed) and person-hours (number of persons multiplied by the number of hours per year exposed) were the reported exposure metrics. Upon meeting the 8-hour standard, it was estimated that less than 0.1% of the total person-days simulated for the nonsmoking cardiovascular-disease population were associated with a maximum COHb level greater than or equal to 2.1% (USEPA, 1992; Johnson *et al.,* 1992).

as individuals with cardiovascular disease, pregnant women, and their unborn children but concluded that "the contribution of indoor sources cannot be effectively mitigated by ambient air quality standards" (59 FR 38914).

Based on consideration of the evidence and the quantitative results of the exposure assessment, the Administrator concluded that revisions of the current primary standards for CO were not appropriate at that time (59 FR 38914). The Administrator additionally concluded that both averaging times for the primary standards, 1 hour and 8 hours, be retained. The 1-hour and 8-hour averaging times were first chosen when EPA promulgated the primary NAAQS for CO in 1971. The selection of the 8-hour averaging time was based on the following: (a) Most individuals' COHb levels appeared to approach equilibrium after 8 hours of exposure, (b) the 8-hour time period corresponded to the blocks of time when people were often exposed in a particular location or activity (*e.g.,* working or sleeping), and (c) judgment that this provided a good indicator for tracking continuous exposures during any 24-hour period. The 1-hour averaging time was selected as better representing a time period of interest to short-term CO exposure and providing protection from effects which might be encountered from very short duration peak exposures in the urban environment (59 FR 38914).

b. Current Review

To evaluate whether it is appropriate to consider retaining the current primary CO standards, or whether consideration of revisions is appropriate, we adopted an approach in this review that builds upon the general approach used in the last review and reflects the broader body of evidence and information now available. As summarized above, the Administrator's decisions in the previous review were based on an integration of information on health effects associated with exposure to ambient CO; expert judgment on the adversity of such effects on individuals; and a public health policy judgment as to what standard is requisite to protect public health with an adequate margin of safety, which were informed by air quality and related analyses, quantitative exposure and risk assessments when possible, and qualitative assessment of impacts that could not be quantified. Similarly, in this review, as described in the Policy Assessment, we draw on the current evidence and quantitative assessments of exposure pertaining to the public health risk of ambient CO. In considering the scientific and technical information, here as in the Policy Assessment, we consider both the information available at the time of the last review and information newly available since the last review, including the current ISA and the 2000 AQCD (USEPA, 2010a; USEPA, 2000), as well as current and preceding quantitative exposure/dose assessments (USEPA 2010b; Johnson *et al.,* 2000; USEPA 1992).

As described earlier, at this time as at the time of the last review, the best characterized health effect associated with CO levels of concern is hypoxia (reduced oxygen availability) induced by increased COHb levels in blood (ISA, section 5.1.2). Accordingly, CO exposure is of particular concern for those with impaired cardiovascular systems, and the most compelling evidence of cardiovascular effects is that from a series of controlled human exposure studies among exercising individuals with CAD (ISA, sections 5.2.4 and 5.2.6). Additionally available in this review are a number of epidemiological studies that investigated the association of cardiovascular disease-related health outcomes with concentrations of CO at ambient monitors. To inform our review of the ambient standards, we performed a quantitative exposure and dose modeling analysis that estimated COHb levels associated with different air quality conditions in simulated at-risk populations in two U.S. cities, as described in detail in the REA and summarized in the Policy Assessment (PA, section 2.2.2). Thus, in developing conclusions with regard to the CO NAAQS, EPA has taken into account both evidence-based and exposure/dose-based considerations.

The approach to reaching a decision on the adequacy of the current primary standards is framed by consideration of the following series of key policy-relevant questions.

- Does the currently available scientific evidence- and exposure/dose/risk-based information, as reflected in the ISA and REA, support or call into question the adequacy of the protection afforded by the current CO standards?
- Does the current evidence alter our conclusions from the previous review regarding the health effects associated with exposure to CO?
- Does the current evidence continue to support a focus on COHb levels as the most useful indicator of CO exposures and the best biomarker to characterize potential for health effects associated with exposures to ambient CO? Or does the current evidence provide support for a focus on alternate dose indicators to characterize potential for health effects?
- Does the current evidence alter our understanding of populations that are particularly susceptible to CO exposures? Is there new evidence that suggest additional susceptible populations that should be given increased focus in this review?
- Does the current evidence alter our conclusions from the previous review regarding the levels of CO in ambient air associated with health effects?
- To what extent have important uncertainties identified in the last review been reduced and/or have new uncertainties emerged?

The following sections describe the assessment of these issues in the Policy Assessment, the advice received from CASAC, as well as the comments received from various parties, and then presents the Administrator's proposed conclusions regarding the adequacy of the current primary standards.

2. Evidence-Based and Exposure/Dose-Based Considerations in the Policy Assessment

The Policy Assessment (chapter 2) considers the evidence presented in the Integrated Science Assessment, and preceding AQCDs, as discussed above in section II.B as a basis for evaluating the adequacy of the current CO standards, recognizing that important uncertainties remain. The Policy Assessment concludes that the combined consideration of the body of evidence and the results from the quantitative exposure and dose assessment provide support for standards at least as protective as the current suite of standards to provide appropriate public health protection for susceptible populations, including most particularly individuals with cardiovascular disease, against effects of CO in exacerbating conditions of reduced oxygen availability to the heart (PA, section 2.4). More specifically, the Policy Assessment concludes that the combined consideration of the evidence and quantitative estimates from the REA may be viewed as providing support for either retaining or revising the current suite of standards (PA, p. 2–59). CASAC stated agreement with this conclusion, while additionally expressing a "preference" for revisions to a lower standard. Members of the public who provided comments on the draft Policy Assessment supported retaining the current standard without revision. The specific considerations on which the Policy Assessment conclusions are based are described in the subsections below.

a. Evidence-Based Considerations

In considering the evidence available for the current review of the CO NAAQS, the Policy Assessment discussed whether or not, or the extent to which, the current evidence alters conclusions reached in the previous review regarding levels of CO in ambient air associated with health effects and associated judgments on adequacy of the current standards. With this discussion, the Policy Assessment also considered the extent to which important uncertainties identified in the last review have been reduced or new uncertainties have emerged.

As an initial matter, the Policy Assessment recognized that at the time of the last review, EPA's conclusions regarding the adequacy of the existing CO standards were drawn from the combined consideration of the evidence of COHb levels for which cardiovascular effects of concern had been reported and the results of an exposure and dose modeling assessment (59 FR 38906). As described in more detail above, the key effects judged to be associated with CO exposures resulting from concentrations observed in ambient air were cardiovascular effects, as measured by decreased time to onset of exercise-induced angina and to onset of ECG ST-segment depression (59 FR 38913). As at the time of the last review, the Policy Assessment noted that the evidence available in this review includes multiple studies that document decreases in time to onset of exercise-induced angina (a symptom of myocardial ischemia) in multiple studies at post-exposure COHb levels ranging from 2.9 to 5.9% (CO–Ox), which represent incremental increases of approximately 1.4–4.4% COHb from baseline (CO–Ox) (PA, Table 2–2; Adams *et al.,* 1988; Allred *et al.,* 1989a, 1989b, 1991; Anderson *et al.,* 1973; Kleinman *et al.,* 1989, 1998 [42]; Sheps *et al.,* 1987 [43]). The study results from Allred *et al.* (1989a, 1989b, 1991) also provide evidence for these effects in terms of COHb measurements using gas chromatography.[44] [45] Evidence also available at the time of the last review of effects in other clinical study groups includes effects in subjects with cardiac arrhythmias and effects on exercise duration and maximal aerobic capacity in healthy adults. Among the studies of myocardial ischemia indicators in patients with CAD, none provide evidence of a measurable threshold at the lowest experimental CO exposures and associated COHb levels assessed (*e.g.,* mean of 2.0–2.4% COHb, GC) which resulted in average increases in COHb of about 1.5% over pre-exposure baseline (Anderson *et al.,* 1973; Kleinman *et al.,* 1989; Allred *et al.* 1989a, 1989b, 1991).[46] Allred *et al.* (1989a, 1989b, 1991) further reported a dose-response relationship between the increased COHb levels and the response of the assessed indicators of myocardial ischemia (Allred *et al.,* 1989a, 1989b, 1991). While this evidence informs our conclusions regarding COHb levels associated with health effects, the CO exposure concentrations employed in the studies to achieve these COHb levels were substantially above ambient concentrations. Thus, an exposure and dose assessment was performed to consider the COHb levels that might be attained as a result of exposures to ambient CO allowed under the current NAAQS, as described in section II.C above.

Since the time of the last review, there have been no new controlled human exposure studies specifically designed to evaluate the effects of CO exposure in susceptible populations at study mean COHb levels at or below 2% COHb. Thus, similar to the last review, the multilaboratory study by Allred *et al.* (1989a, 1989b, 1991) continues to be the study that has evaluated cardiovascular effects of concern (*i.e.,* reduced time to exercise-induced myocardial ischemia as indicated by ECG ST-segment changes and angina) at the lowest tested COHb levels (ISA, section 2.7). This study is also of particular importance in this review because it is considered the most rigorous and well designed study, presenting the most sensitive analysis methods (GC used in addition to CO–Ox) to quantify COHb blood levels. Key findings from that study with regard to levels of CO associated with health effects, as discussed in section II.B.2 above, include the following:

- Short (50–70 minute) exposure to increased CO concentrations that resulted in increases in COHb to mean levels of 2.0% and 3.9% (post-exercise) from mean a baseline level of 0.6% significantly reduced exercise time required to induce markers of myocardial ischemia in CAD patients. For the more objective marker of ST-segment change, the lower exposure reduced the time to onset by 5.1% (approximately one half minute) and the higher exposure reduced the time to onset by 12.1%.[47]
- The associated dose-response relationship between incremental changes in COHb and change in time to myocardial ischemia in CAD patients indicates a 1.9% and 3.9% reduction in time to onset of exercise-induced angina and ST-segment change, respectively, per 1% increase in COHb concentration from average baseline COHb of 0.6% without evidence of a measurable threshold.

As described in section II.B.2 above, a number of epidemiological studies of health outcome associations with ambient CO have been conducted since the last review. These include studies that have reported associations with different ambient CO metrics (*e.g.,* 1-hour and 8-hour averages, often as central-site estimates) derived from CO measurements at fixed-site ambient monitors in selected urban areas of the U.S. and cardiovascular endpoints other than stroke, particularly hospitalizations and emergency department visits for specific cardiovascular health outcomes including IHD, CHF and CVD (Bell *et al.,* 2009; Koken *et al.,* 2003; Linn *et al.,* 2000; Mann *et al.,* 2002; Metzger *et al.,* 2004; Symons *et al.,* 2006; Tolbert *et al.,* 2007; Wellenius *et al.,* 2005). In general, these studies, many of which were designed to evaluate the effects of a variety of air pollutants, including CO, report positive associations, a number of which are statistically significant (ISA, sections 5.2.3 and 5.2.1.9). The long-standing body of evidence for CO summarized above, including the well-characterized role of CO in limiting oxygen availability, lends biological plausibility to the ischemia-related health outcomes reported in the epidemiological studies, providing coherence between these studies and the clinical evidence of short-term exposure to CO and health effects. Thus, although there is no new evidence

[42] One new study of this type is available since the 1994 review. This study, which focused on a target COHb level of 3.9% COHb (CO–Ox) and is discussed in the 2000 AQCD is generally consistent with the previously available studies (2000 AQCD, section 6.2.2; Kleinman *et al.,* 1998).

[43] *See* footnote 15 above.

[44] Gas chromatography is generally recognized to be the more accurate method for COHb levels below 5% (ISA, section 5.2.4).

[45] In the lower CO exposure group, the post-exposure mean COHb was 3.21% by CO–Ox and 2.38% by GC, while the post-exercise mean COHb was 2.65% by CO–Ox and 2.00% by GC (Allred *et al.,* 1989a, 1989b, 1991).

[46] The studies by Anderson *et al.* (1973) and Kleinman *et al.* (1989) did not use GC to measure COHb levels, and reported reduced exercise duration due to increased chest pain at CO exposures resulting in 2.8–3.0% COHb (CO–Ox). The COHb levels assessed in these two studies represented increase in average COHb levels over baseline of 1.4% and 1.6% COHb.

[47] Across all subjects, the mean time to angina onset for baseline or control ("clean" air) exposures was approximately 8.5 minutes, and the mean time to ST endpoint was approximately 9.5 minutes, with the "time to onset" reductions of the two exposure levels being approximately one half and one minute, respectively for ST-segment change, and slightly less and slightly more than one half minute, respectively, for angina (Allred *et al.,* 1989b).

regarding the effects of short-term controlled CO exposures that result in lower COHb levels, the evidence is much expanded with regard to epidemiological [48] analyses of ambient monitor concentrations, which observed associations between specific and overall cardiovascular-related outcomes and ambient CO measurements.

The Policy Assessment considered the combined evidence base for CO cardiovascular effects in the context of a conceptual model of the pathway from CO exposures to the occurrence of these effects (as described in section 2.2.1 of the PA). In this context, the Policy Assessment noted differences between the controlled human exposure and epidemiological studies, described above, with regard to the elements along this pathway that have been investigated in those studies. The controlled human exposure studies document relationships between directly measured controlled short-term CO exposures and specific levels of an internal dose metric, COHb, which elicited specific myocardial ischemia-related responses in CAD patients. These studies inform our interpretation of the associations we observed in the epidemiological studies. The epidemiological studies reported associations between CO levels measured at fixed-site monitors and emergency department visits and/or hospital admissions for IHD and other cardiovascular disease-related outcomes that are plausibly related to the effects on physiological indicators of myocardial ischemia (*e.g.,* ST-segment changes) demonstrated in the controlled human exposure studies, providing coherence between the two sets of findings (ISA, p. 5–48). With regard to extending our understanding of effects occurring below levels of CO evaluated in the controlled human exposure studies, however, the epidemiological evidence for CO is somewhat limited. The epidemiological evidence lacks measurements of COHb or personal exposure concentrations that would facilitate integration with the controlled human exposure study data. Furthermore, the epidemiological evidence base for IHD outcomes or CVD outcomes as a whole includes a number of studies involving conditions in which the current standard was not met. Though these studies are informative to consideration of the relationship of health effects to the full range of ambient CO concentrations, the Policy Assessment indicated that they are less useful to informing our conclusions regarding adequacy of the current standards.

As discussed in the Policy Assessment, the smaller set of epidemiological studies, under conditions where the current standards were met, is considered to better inform our assessment of the adequacy of the standards or conditions of lower ambient concentrations. Among the few studies conducted during conditions in which the current standards were always met, however, the studies reporting statistical significance for IHD or all CVD outcomes are limited to a single study area (*i.e.* Atlanta). When the analyses reporting significance for association with CHF outcomes are also considered, a second study area is identified (Allegheny County, PA) in which the current standard is met throughout the study period. The analyses for both areas involve the use of central site monitor locations or area-wide average concentrations, which given the significant concentration gradients of CO in urban areas (ISA, section 3.6.8.2), complicates our ability to draw conclusions from them regarding ambient CO concentrations of concern. Therefore, the Policy Assessment primarily focused consideration of the epidemiological studies on the extent to which this evidence is consistent with and generally supportive of conclusions drawn from the combined consideration of the controlled human exposure evidence with estimates from the exposure and dose assessment, as discussed below. The Policy Assessment indicated that, as in the previous review, the integration of the controlled human exposure evidence with the exposure and dose estimates will be most important to informing conclusions regarding ambient CO concentrations of public health concern.

With regard to areas of uncertainty, the Policy Assessment recognized that some important uncertainties have been reduced since the time of the last review, some still remain and others, associated with newly available evidence, have been identified. This range of uncertainties identified at the time of the last review (59 FR 38913, USEPA, 1992), as well as any newly identified uncertainties were considered in the Policy Assessment as discussed below (PA, section 2.2.1).

The CO-induced effects considered of concern at the time of the last review were reduced time to exercise-induced angina and ST-segment depression in patients suffering from coronary artery disease as a result of increases in COHb associated with short CO exposures. These effects had been well documented in multiple studies, and it was recognized that the majority of cardiologists at the time believed that recurrent exercise-induced angina was associated with substantial risk of precipitating myocardial infarction, fatal arrhythmia, or slight but cumulative myocardial damage (USEPA, 1992, p. 22; 59 FR 38911; Basan, 1990; 1991 AQCD). As at the time of the last review, although ST-segment depression is a recognized indicator of myocardial ischemia, the exact physiological significance of the observed changes among individuals with CAD is unclear (ISA, p. 5–48).

In interpreting the study results at the time of the last review, EPA recognized uncertainty in the COHb measurements made using CO–Ox and associated uncertainty in establishing a lowest effects level for CO (USEPA, 1992, p. 31). A then-recent multicenter study (Allred *et al.,* 1989a, 1989b, 1991) was of great importance at that time for reasons identified above. Similarly, the Science and Policy Assessments place primary emphasis on the findings from this study in the current review of the evidence related to cardiovascular effects associated with CO exposure, recognizing the superior quality of the study, both in terms of the rigorous study design as well as the sensitivity of the analytical methods used in determining COHb concentrations (ISA, section 2.7). No additional controlled human exposure studies are available that evaluate responses to lower COHb levels in the cardiovascular-disease population, and uncertainties still remain in determining specific and quantitative relationships between the CO-induced effects in these studies and the increased risk of specific health outcomes. Further, with regard to then-unidentified effects at lower COHb levels, no studies have identified other effects on the CAD population or on other populations at lower exposures (ISA, sections 5.2.2).

The last review recognized uncertainty with regard to the potential for short-term CO exposures to contribute to CNS effects which might affect an individual's performance of complex activities such as driving a car or to contribute to other effects of concern. It was concluded, however, that the focus of the review on cardiovascular effects associated with COHb levels below 5% also provided adequate protection against potential

[48] Few epidemiological studies that had investigated the relationship between CO exposure and ischemic heart disease were available at the time of the last completed review (1991 AQCD, section 10.3.3).

adverse neurobehavioral effects.[49] No new controlled human exposure studies have evaluated CNS or behavioral effects of exposure to CO (ISA, section 5.3.1). However, given the drastic reduction in CO ambient concentrations, the Policy Assessment concludes that occurrence of these effects in response to ambient CO would be expected to be rare within the current population. Thus, the Policy Assessment concludes that uncertainty with regard to the potential for such effects to be associated with current ambient CO exposures is reduced (PA, p. 2–35).

Since the 1994 review, the epidemiologic and toxicological evidence of effects on birth and developmental outcomes has expanded, although the available evidence is still considered limited with regard to effects on preterm birth, birth defects, decreases in birth weight, measures of fetal growth, and infant mortality (ISA, section 5.4). Further, while animal toxicological studies provide support and coherence for those effects, the understanding of the mechanisms underlying reproductive and developmental effects is still lacking (ISA, section 5.4.1). Thus, the Policy Assessment recognizes that although the evidence continues to "suggest[s] that critical developmental phases may be characterized by enhanced sensitivity to CO exposure" (ISA, p. 2–11), evidence is lacking for adverse developmental or reproductive effects at CO exposure concentrations near those associated with current levels of ambient CO (PA, pp. 2–35 to 2–36).

As described above, the much-expanded epidemiologic database in the current review includes studies that show associations between ambient CO concentrations and increases in emergency room visits and hospitalizations for disease events plausibly linked to the effects observed in the controlled human exposure studies of CAD patients (ISA, section 2.5.1), providing support for the ISA's conclusion regarding coronary artery disease as the most important susceptibility characteristic for increased health risk due to CO exposure (ISA, p. 2–10). However, the Policy Assessment recognizes aspects of this epidemiological evidence that complicate quantitative interpretation of it with regard to ambient concentrations that might be eliciting the reported health outcomes. As an initial matter, the Policy Assessment notes the substantially fewer studies conducted in areas meeting the current CO standards than is the case for NO_2 and PM (USEPA, 2008d, 2009f). Further, the Policy Assessment recognizes complicating aspects of the evidence that relate to conclusions regarding CO as the pollutant eliciting the effect reported in the epidemiological studies and to our understanding of the ambient CO and nonambient concentrations to which study subjects demonstrating these outcomes are exposed.

With regard to these complications, the Policy Assessment first considers the extent to which the use of two-pollutant regression models, a commonly used statistical method (ISA, section 1.6.3), inform conclusions regarding CO as the pollutant eliciting the effects in these studies (PA, pp. 2–36 to 2–37). Although CO associations, in some studies, are slightly attenuated in models that adjusted for other combustion-related pollutants (*e.g.,* $PM_{2.5}$ or NO_2), they generally remain robust (ISA, Figures 5–6 and 5–7).[50] In considering these two-pollutant model results, however, the Policy Assessment recognizes the potential for there to be etiologically relevant pollutants that are correlated with CO yet absent from the analysis. Similarly, CASAC commented that "the problem of co-pollutants serving as potential confounders is particularly problematic for CO". They stated that "consideration needs to be given to the possibility that in some situations CO may be a surrogate for exposure to a mix of pollutants generated by fossil fuel combustion" and "a better understanding of the possible role of co-pollutants is relevant to * * * the interpretation of epidemiologic studies on the health effects of CO" (Brain and Samet, 2010d). This issue is particularly important in the case of CO in light of uncertainty associated with CO-related effects at low ambient concentrations (discussed below) and in light of the sizeable portion of ambient CO measurements that are at or below monitor detection limits. Consequently, the extent to which multi-pollutant regression models effectively disentangle and quantitatively interpret a CO-specific effect distinct from that of other pollutants remains an area of uncertainty.

In considering ambient concentrations that may be triggering health outcomes analyzed in the epidemiological studies, the Policy Assessment recognizes the uncertainty introduced by exposure error. Exposure error can occur when a surrogate is used for the actual ambient exposure experienced by the study population (*e.g.,* ISA, section 3.6.8). There are two aspects to the epidemiological studies in the specific case of CO, as contrasted with the cases of other pollutants such as NO_2 and PM, that may contribute to exposure error in the CO studies. The first relates to the low concentrations of CO considered in the epidemiological studies and monitor detection limits. The second relates to the use in the epidemiological studies of area-wide or central-site monitor CO concentrations in light of information about the gradient in CO concentrations with distance from source locations such as highly-trafficked roadways (ISA, section 3.5.1.3).

As discussed in the Policy Assessment, uncertainty in the assessment of exposure to ambient CO concentrations is related to the prevalence of ambient CO monitor concentrations at or below detection limits, which is a greater concern for the more recently available epidemiological studies in which the study areas have much reduced ambient CO concentrations compared with those in the past (PA, pp. 2–37 to 2–38). For example, the ISA notes that roughly one third of the 1-hour ambient CO measurements reported to AQS for 2005–2007 were below the method limit of detection for the monitors analyzed (ISA, p. 3–34). A similarly notable proportion of measurements occur below the monitor detection limit for epidemiological study areas meeting the current standards (*e.g.,* Atlanta, Allegheny County) (PA, Appendix B). This complicates our interpretation of specific ambient CO concentrations associated with health effects (ISA, p. 3–91; Brain and Samet, 2010d). In contrast to CO, other combustion-related criteria pollutants such as $PM_{2.5}$ and NO_2 generally occur above levels of detection, providing us with greater confidence in quantitative interpretations of epidemiological studies for those pollutants.

There are also differences in the spatial variability associated with $PM_{2.5}$ and NO_2 concentrations as compared to CO concentrations that add complexity

[49] The evidence available at the time of the last review was based on a series of studies conducted from the mid 1960's through the early 1990's, with inconsistent findings of neurological effects at exposures to CO resulting in COHb levels ranging from 5–20% (1991 AQCD).

[50] In interpreting the epidemiological evidence for cardiovascular morbidity the ISA notes that it "is difficult to determine from this group of studies the extent to which CO is independently associated with CVD outcomes or if CO is a marker for the effects of another traffic-related pollutant or mix of pollutants. On-road vehicle exhaust emissions are a nearly ubiquitous source of combustion pollutant mixtures that include CO and can be an important contributor to CO in near-road locations. Although this complicates the efforts to disentangle specific CO-related health effects, the evidence indicates that CO associations generally remain robust in copollutant models and supports a direct effect of short-term ambient CO exposure on CVD morbidity." (ISA, pp. 5–40 to 5–41).

to the estimation of CO exposures in epidemiological studies. In general, $PM_{2.5}$ concentrations tend to be more spatially homogenous across an urban area than CO concentrations. CO concentrations in urban areas are largely driven by mobile sources, while urban $PM_{2.5}$ concentrations substantially reflect contributions from mobile and a variety of stationary sources. The greater spatial homogeneity in $PM_{2.5}$ concentrations is due in part to the transport and dispersion of small particles from the multiple sources (USEPA, 2009f, sections 3.5.1.2 and 3.9.1.3), as well as to contributions from secondarily formed components "produced by the oxidation of precursor gases (*e.g.,* sulfur dioxide and nitrogen oxides) and reactions of acidic products with NH_3 and organic compounds" (USEPA, 2009f, p. 3–185), which likely contribute to spatial homogeneity. Similarly, "because NO_2 in the ambient air is due largely to the atmospheric oxidation of NO emitted from combustion sources (ISA, section 2.2.1), elevated NO_2 concentrations can extend farther away from roadways than the primary pollutants also emitted by on-road mobile sources" (40 FR 6479, February 9, 2010). In contrast to $PM_{2.5}$ and NO_2, CO is not formed through common atmospheric oxidation processes, which may contribute to the steeper CO gradient observed near roadways. Therefore, the misclassification of exposure arising from the utilization of central site monitors to measure $PM_{2.5}$ and NO_2 exposures is likely to be smaller than is the case for CO exposures.

An additional complication to a comparison of our consideration of the CO epidemiological evidence to that for other criteria pollutants is that, in contrast to the situation for all other criteria pollutants, the epidemiological studies for CO use a different exposure/dose metric from that which is the focus of the broader health evidence base, and additional information that might be used to bridge this gap is lacking. In the case of CO, the epidemiological studies use air concentration as the exposure/dose metric, while the broader health effects evidence for CO demonstrates and focuses on an internal biomarker of CO exposure (COHb) which has been considered a critical key to CO toxicity. In the case of the only other criteria pollutant for which the health evidence relies on an internal dose metric—lead—the epidemiological studies also use that metric.[51] For other criteria pollutants, including PM and NO_2, air concentrations are used as the exposure/dose metric in both the epidemiological studies and the other types of health evidence. Thus, there is no comparable aspect in the PM or NO_2 evidence base. The strong evidence describing the role of COHb in CO toxicity is important to consider in interpreting the CO epidemiological studies and contributes to the biological plausibility of the ischemia-related health outcomes that have been associated with ambient CO concentrations. Yet, we do not have information on the COHb levels of epidemiological study subjects that we can evaluate in the context of the COHb levels eliciting health effects in the controlled human exposure studies. Further, we lack additional information on the CO exposures of the epidemiological study subjects to both ambient and nonambient sources of CO that might be used to estimate their COHb levels and bridge the gap between the two study types.

Additionally the ISA recognizes that the changes in COHb that would likely be associated with exposure to the low ambient CO concentrations assessed in some of the epidemiological studies would be smaller than changes associated with "substantially reduced {oxygen} delivery to tissues," that might plausibly lead to the outcomes observed in those studies, with additional investigation needed to determine whether there may be another mechanism of action for CO that contributes to the observed outcomes at low ambient concentrations (ISA, p. 5–48). Thus, there are uncertainties associated with the epidemiological evidence that "complicate the quantitative interpretation of the epidemiologic findings, particularly regarding the biological plausibility of health effects occurring at COHb levels resulting from exposures to the ambient CO concentrations" assessed in these studies (ISA, p. 2–17).

In summary, the Policy Assessment concludes that some important uncertainties from the last review have been reduced, including those associated with concerns for ambient levels of CO to pose neurobehavioral risks as current concentrations of ambient CO are well below those that might be expected to result in COHb levels as high as those associated with these effects. Additionally, our exposure and dose models have improved giving us increased confidence in their estimates. A variety of uncertainties still remain including the adverse nature and significance of the small changes in time to ST-segment depression identified at the lowest COHb levels investigated, and the magnitude of associated risk of specific health outcomes, as well as the potential for as-yet-unidentified health effects at COHb levels below 2%. Additionally, although the evidence base is somewhat expanded with regard to the potential for CO effects on the developing fetus, uncertainties remain in our understanding of the potential influence of low, ambient CO exposures on conditions existing in the fetus and newborn infant and on maternal-fetal relationships. We additionally recognize that the expanded body of epidemiological evidence includes its own set of uncertainties which complicates its interpretation, particularly with regard to ambient concentrations that may be eliciting health outcomes.

b. Exposure/Dose-Based Considerations

In considering the evidence from controlled human exposure studies to address the question regarding ambient CO concentrations associated with health effects, we have developed estimates of COHb associated with different air quality conditions using quantitative exposure and dose modeling, as was done at the time of the last review. The current estimates are presented in the REA and discussed with regard to policy-relevant considerations in this review in the Policy Assessment (PA, section 2.2.2). Since the last review, there have been numerous improvements to the exposure and COHb models that we use to estimate exposure and dose for the current review. The results of modeling using these improved tools in the current review and associated conclusions in the Policy Assessment are described below with regard to the expectation for COHb levels of concern to occur in the at-risk population under air quality conditions associated with the current CO standards.

In considering the results from the REA, the Policy Assessment considered several questions including those concerning the magnitude of COHb levels estimated in the simulated at-risk populations in response to ambient CO exposure, as well as the extent to which such estimates may be judged to be important from a public health perspective.

In addressing the questions concerning the magnitude of at-risk population COHb levels estimated to

[51] In the case of lead (Pb), in contrast to that of CO, the epidemiological evidence is focused on associations of Pb-related health effects with measurements of Pb in blood, providing a direct linkage between the pollutant, via the internal biomarker of dose, and the health effects. Thus, for Pb, as compared to the case for CO, we have less uncertainty in our interpretations of the epidemiological studies with regard to the pollutant responsible for the health effects observed.

occur in areas simulated to just meet the current, controlling, 8-hour standard and what portion of the at-risk population is estimated to experience maximum COHb levels above levels of potential health concern, the Policy Assessment first noted the context for the population COHb estimates provided by the REA simulations of exposure to ambient CO (REA, section 6.2). As in the last review, the Policy Assessment recognized that indoor sources of CO can be important determinants of population exposures to CO and to population distributions of daily maximum COHb levels, and that for some portions of the population, these sources may dominate CO exposures and related maximum COHb levels. The Policy Assessment additionally took note of the conclusions drawn in the previous review that the contribution of indoor sources to individual exposures and associated COHb levels cannot be effectively mitigated by ambient air quality standards (*e.g.,* 59 FR 38914) and so focused on COHb levels resulting from ambient CO exposures. In so doing, however, the Policy Assessment also recognized as noted in section II.C above, that simulations focused solely on exposures associated with ambient CO may overestimate the response of COHb levels to short-duration ambient exposures (the ambient contribution) as pre-exposure baseline COHb levels will necessarily not reflect the contribution of both nonambient and ambient sources. Additionally, these simulations may underestimate COHb levels that would occur in situations with appreciable nonambient exposure.

As recognized in the Policy Assessment and described in detail in the REA, estimates for exposure concentrations indicated that highest ambient CO exposures occurred in in-vehicle microenvironments, with next highest exposures in microenvironments where running vehicles congregate such as parking areas and fueling stations, (REA, section 6.1).

In considering the REA estimates for current or "as is" air quality conditions and conditions simulated to just meet the current 8-hour standard, the Policy Assessment particularly focused on the extent to which the current standards provide protection to the simulated at-risk population from COHb levels of potential concern, by comparing the estimated levels in the population to the benchmarks described above. As described above, the REA presents two sets of COHb estimates: the first set of absolute estimates reflect the impact of ambient CO exposures in the absence of exposure to nonambient CO, but in the presence of endogenous CO production, while the second set are estimates of the portion of absolute COHb estimated to occur in response to the simulated ambient CO exposures, *i.e.,* after subtraction of COHb resulting from endogenous CO production (REA, sections 4.4.7 and 5.10.3). In describing the REA results, the Policy Assessment draws from exposure and dose estimates for both the HD and CHD populations (REA, section 6.2), recognizing that, in terms of percentages of persons exposed and experiencing daily maximum end-of-hour COHb at or above specific levels, the results are similar for the two simulated at-risk populations (HD and CHD). We note that, in terms of absolute numbers of persons, the results differ due to differences in the size of the two populations.

The Policy Assessment first considered the absolute COHb results with regard to the percentage of simulated populations experiencing at least one day with an end-of hour COHb level above selected benchmarks (Table 1 includes these results for the HD populations). Another dimension of the analysis, presented in Table 2 (for the CHD populations),[52] is the percentage of simulated populations experiencing multiple days in the simulated year with an end-of-hour COHb level above the same benchmarks. These two dimensions of the dose estimates are combined in the metric, person-days, which is presented in Tables 6–15, 6–16, 6–18 and 6–19 of the REA. The metric, person-days, was the focus of exposure/dose considerations in the last review for which a previous version of the exposure/dose model was used (59 FR 38914; USEPA, 1992).[53] The person-days metric, which summarizes occurrences across the number of persons in the at-risk population multiplied by the number of days in the year, is a common cumulative measure of population exposure/dose that simultaneously takes into account both the number of people affected and the numbers of times each is affected.

As expected, given that current ambient concentrations in the two study areas are well below the CO standards, the absolute COHb estimates under current air quality conditions are appreciably lower than the corresponding estimates for conditions of higher ambient CO concentrations in which the current 8-hour standard is just met (Table 1). Under "as is" (2006) conditions in the two study areas, no person in the simulated at-risk populations is estimated to experience any days in the year with end-of-hour COHb concentrations at or above 3% COHb, and less than 0.1% of the simulated at-risk populations are estimated to experience at least one end-of-hour COHb concentration at or above 2% (Table 1).

Under conditions with higher ambient CO concentrations simulated to just meet the current 8-hour standard, the portion of the simulated at-risk populations estimated to experience daily maximum end-of-hour COHb levels at or above benchmarks is greater in both study areas, with somewhat higher percentages for the Denver study area population (Table 1). In both study areas, nonetheless, less than 1% of the simulated at-risk populations is estimated to experience a single day with a maximum end-of hour COHb level at or above 3% (Table 1) and no person is estimated to experience more than one such day in a year (Table 2). Further, less than 0.1% of either simulated population in either study area is estimated to experience a single day with maximum end-of-hour COHb at or above 4%. A difference between the study areas is more evident for lower benchmarks, with less than 5% of the simulated at-risk population in the Denver study area and less than 1% of the corresponding population in the Los Angeles study area estimated to experience any days with a maximum end-of-hour COHb level at or above 2% (Table 1). Appreciably smaller percentages of the simulated at-risk population were estimated to experience more than one day with such levels (Table 2). For example, less than 1.5% of the population is estimated to experience more than one day in a year with a maximum COHb level at or above 2.0%, and less than 0.1% are estimated to experience six or more such days in a year. Additionally, consistent with the findings of the assessment performed for the review completed in 1994, less than 0.1% of person-days for the simulated at-risk populations were estimated to have end-of-hour COHb levels at or above 2% COHb (REA, Tables 6–18 and 6–19).

[52] As described in the REA, the analyses providing results for Table 2 were only performed for the CHD populations, and so are not available for the larger HD population, although as mentioned above the results in terms of percentage are expected to be similar.

[53] As described in section II.C. above, pNEM, the model used in the last review, employed a cohort-based approach from which person-days were the exposure and dose metrics (USEPA, 1992; Johnson *et al.,* 1992).

TABLE 1—PORTION OF SIMULATED HD POPULATIONS WITH AT LEAST ONE DAILY MAXIMUM END-OF-HOUR COHb LEVEL (ABSOLUTE) AT OR ABOVE INDICATED LEVELS UNDER AIR QUALITY CONDITIONS SIMULATED TO JUST MEET THE CURRENT STANDARD AND "AS IS" CONDITIONS

Daily maximum end-of-hour COHb (absolute)	Percentage (%) of simulated HD population [A]			
	Just meeting current 8-hour standard (8-hr DV = 9.4 ppm)		"As is" (2006) conditions	
	Los Angeles (1-hr DV = 11.8 ppm)	Denver (1-hr DV = 16.2 ppm)	Los Angeles (8-hr DV = 5.6 ppm) (1-hr DV = 8.2 ppm)	Denver (8-hr DV = 3.1 ppm) (1-hr DV = 4.6 ppm)
≥ 4.0%	0	[B] < 0.1	0	0
≥ 3.0%	[B] < 0.1	0.3		
≥ 2.5%	[B] < 0.1	0.9		
≥ 2.0%	0.6	4.5	[B] < 0.1	[B] < 0.1
≥ 1.5%	5.0	24.5	1.6	1.2

[A] Drawn from Tables 6–15 through 6–19 of the REA.
[B] <0.1 is used to represent nonzero estimates below 0.1%.
Abbreviations: hr = hour, DV = Design Value.

TABLE 2—PORTION OF SIMULATED CHD POPULATION WITH MULTIPLE DAYS OF MAXIMUM END-OF-HOUR COHb LEVELS (ABSOLUTE) AT OR ABOVE THE INDICATED LEVELS UNDER AIR QUALITY CONDITIONS SIMULATED TO JUST MEET THE CURRENT STANDARD AND "AS IS" CONDITIONS

Maximum end-of-hour COHb level (absolute)	Percentage (%) of simulated CHD population [A]											
	Just meeting current 8-hour standard (8-hr DV = 9.4 ppm)						"As is" (2006) conditions					
	Los Angeles (1-hr DV = 11.8 ppm)			Denver (1-hr DV = 16.2 ppm)			Los Angeles (8-hr DV = 5.6 ppm) (1-hr DV = 8.2 ppm)			Denver (8-hr DV = 3.1 ppm) (1-hr DV = 4.6 ppm)		
	≥ 2 days	≥ 4 days	≥ 6 days	≥ 2 days	≥ 4 days	≥ 6 days	≥ 2 days	≥ 4 days	≥ 6 days	≥ 2 days	≥ 4 days	≥ 6 days
≥ 3.0%	0	0	0	0	0	0	0	0	0	0	0	0
≥ 2.5%	[B] < 0.1	0	0	[B] < 0.1	0	0	0	0	0	0	0	0
≥ 2.0%	0.2	[B] < 0.1	[B] < 0.1	1.4	0.2	[B] < 0.1	0	0	0	[B] < 0.1	[B] < 0.1	[B] < 0.1
≥ 1.5%	2.2	0.7	0.5	11.2	5.0	3.3	0.5	0.2	0.1	0.7	0.5	0.4

[A] These estimates are drawn mainly from Figures 6–5 and 6–6 of the REA and represent the percentage of persons experiencing greater than or equal to 2, 4, or 6 days with a maximum end-of-hour COHb (absolute) at or above the selected level.
[B] <0.1 is used to represent nonzero estimates below 0.1%.

As described above, the REA also presented estimates of the portion of the absolute COHb levels occurring in response to the simulated ambient CO exposures (*i.e.,* that not derived from endogenous CO production). The REA refers to these estimates as the ambient CO contribution to (absolute) COHb. As observed with the absolute COHb estimates under conditions just meeting the standard, the results for the Denver study area included larger percentages of the population above specific COHb ambient contribution levels than those for the Los Angeles study area, reflecting the study area difference in 1-hour peak concentrations. Although estimates of population percentages for multiple occurrences are not available for the ambient contribution estimates, it is expected that similar to those for absolute COHb, they would be appreciably lower than those shown here for at least one occurrence. Additionally, as mentioned above, somewhat lower ambient contribution estimates might be expected if other (nonambient) CO sources were present in the simulations.

In considering the estimates of population occurrences of daily maximum COHb levels for REA simulations under conditions just meeting the current 8-hour standard (presented in Tables 1 and 2 above), the Policy Assessment notes that an important contributing factor to the higher percentages estimated for the Denver study area population is the occurrence of higher 1-hour peak ambient CO concentrations and consequent higher CO exposures than occur in the corresponding Los Angeles study area simulation (REA, section 6.1.2, Tables 6–7 and 6–10). The difference in the peak 1-hour ambient concentrations is illustrated by the higher 1-hour design value for Denver as compared to Los Angeles (16.2 ppm versus 11.8 ppm), as noted in Tables 1 and 2. This difference, particularly at the upper percentiles of the air quality distribution, is likely driving the higher population percentages estimated to experience higher 1-hour and 8-hour exposures in the Denver study area as compared to Los Angeles (REA, Tables 6–7 and 6–10).[54] The situation is largely reversed under "as is" conditions, where the Los Angeles study area has generally higher 1-hour and 8-hour ambient CO concentrations as illustrated by the design values for *as is* conditions in Tables 1 and 2 above (as well as Tables 3–1 to 3–6, 5–14 and 5–16 of the REA), and Los Angeles also has higher percentages of people estimated to be exposed to the higher exposure concentrations (REA, Tables 6–1 and 6–4). Thus, the Policy Assessment recognizes the impact on daily maximum COHb levels of 1-hour

[54] Other factors that contribute less to differences in COHb estimates between the two study areas include altitude, which slightly enhances endogenous CO and COHb formation and can enhance COHb formation induced by CO exposure under resting conditions (ISA, p. 4–19), and design aspects of the study areas with regard to spatial variation in monitor CO concentrations and population density near these monitors (REA, section 7.2.2.1).

ambient concentrations separate from the impact of 8-hour average concentrations, and takes note of this in considering the REA results with regard to the adequacy of the 1-hour standard. The Policy Assessment concludes that, taken together, the REA results indicate occurrences of COHb levels above the benchmarks considered here that are associated with 1-hour ambient concentrations that are not controlled by the current suite of standards (PA, section 2.2.2).

In considering the public health implications of the quantitative dose estimates, the Policy Assessment considered the daily maximum end-of-hour levels estimated in the REA for conditions just meeting the current suite of standards in light of the effects identified by the evidence at the COHb benchmark levels considered. For example, as a result of ambient CO exposures occurring under air quality conditions adjusted to just meet the current 8-hour standard, the REA estimates that 0.6 percent of the Los Angeles and 4.5 percent of the Denver study at-risk populations may experience an occurrence of a daily maximum end-of-hour COHb level at or above 2% COHb, the low end of the range of average COHb levels experienced by the lower controlled exposure group in the study by Allred *et al.* (1989a, 1989b, 1991), while 0.2 and 1.4 percent, respectively, of the simulated at-risk populations are estimated to experience more than one such occurrence. Additionally, less than 0.1 percent of the simulated populations in either study area are estimated to experience a COHb level similar to the higher controlled exposure group (4% COHb). As discussed in II.B.4 above, the Policy Assessment recognized the magnitude of the "time to onset" reductions observed in the study by Allred *et al.* (1989a, 1989b, 1991), the similarity of the study responses to responses considered clinically significant when evaluating medications to treat angina from coronary artery disease, and conclusions reached by the independent review panel for the study regarding the expectation that frequent encounters in "everyday life" with increased COHb levels on the order of those tested in the study might limit activity and affect quality of life (Allred *et al.,* 1989b, pp. 38, 92–94; 1991 AQCD, p. 10–35), as well as considerations in the review completed in 1994 and assessment of the study findings in the current ISA.

In considering public health implications of the REA estimates, the Policy Assessment also considered the size of the at-risk populations simulated as described in section II.B.4 above, recognizing that the U.S. population with coronary heart disease, angina pectoris (cardiac chest pain) or who have experienced a heart attack in combination with those with silent or undiagnosed ischemia comprises a large population represented by the REA analyses and for which the COHb benchmarks described above (based on studies of CAD patients) are relevant, that is, more susceptible to ambient CO exposure when compared to the general population (ISA, section 5.7). The Policy Assessment also recognized that the REA also simulated ambient CO exposures for the larger HD population, which may also be at increased risk of CO-induced health effects (ISA, section 2.6.1), while noting that within this broader group, implications of CO exposures are more significant for those persons for whom their disease state affects their ability to compensate for the hypoxia-related effects of CO (ISA, section 4.4.4).

In summary, the Policy Assessment, while noting the substantial size of the population of individuals with CHD or other heart diseases in the U.S., recognized that the REA results for conditions just meeting the current standards indicate a very small portion of this population that might be expected to experience more than one occurrence of COHb above 2%, with less than 0.1% of this population expected to experience such a level on as many as six days in a year or a single occurrence as high as 4%, and 0% of the population expected to experience more than one occurrence above 4% COHb. In light of the implications of the health evidence discussed in section II.B.4 and summarized above, the Policy Assessment concluded that the public health significance of these REA results and conclusions regarding the extent to which they are important from a public health perspective depends in part on public health policy judgments about the public health significance of effects at the COHb benchmark levels considered and judgments about the level of public health protection with an adequate margin of safety.

c. Summary

With regard to the different elements of the current standards, the Policy Assessment concludes that it is appropriate to continue to use measurements of CO in accordance with Federal reference methods as the indicator to address effects associated with exposure to ambient CO, and that it is appropriate to continue to retain standards with averaging times of 1 and 8 hours. With regard to form and level for these standards, the Policy Assessment concludes that the information available in this review supports consideration of either retaining the current suite of standards or revising one or both standards.

The Policy Assessment concludes that the extent to which the current standards are judged to be adequate depends on a variety of factors inclusive of science policy judgments and public health policy judgments. These factors include public health policy judgments concerning the appropriate COHb benchmark levels on which to place weight, as well as judgments on the public health significance of the effects that have been observed at the lowest levels evaluated, particularly with regard to relatively rare occurrences. The factors relevant to judging the adequacy of the standards also include consideration of the uncertainty associated with interpretation of the epidemiological evidence as providing information on ambient CO as distinct from information on the mixture of pollutants associated with traffic, and, given this uncertainty, the weight to place on interpretations of ambient CO concentrations for the few epidemiological studies available for air quality conditions that did not exceed the current standards. And, lastly these factors include the interpretation of, and decisions as to the weight to place on, the results of the exposure assessment for the two areas studied relative to each other and to results from past assessments, recognizing the implementation of an improved modeling approach and new input data, as well as distinctions between the REA simulations and resulting COHb estimates and the response of COHb levels to experimental CO exposure as recorded in the controlled human exposure studies.

The Policy Assessment conclusions with regard to the adequacy of the current standards are drawn from both the evidence and from the exposure and dose assessment, taking into consideration related information, limitations and uncertainties recognized above. The combined consideration of the body of evidence and the quantitative exposure and dose estimates are concluded to provide support for a suite of standards at least as protective as the current suite. Further, the Policy Assessment recognizes that conclusions regarding the adequacy of the current standards depend in part on public health policy judgments identified above and judgments about the level of public health protection with an adequate margin of safety.

The Policy Assessment additionally notes the influence that hourly ambient CO concentrations well below the current 1-hour standard may have on ambient CO exposures and resultant COHb levels under conditions just meeting the 8-hour standard, as indicated by the REA results. The REA results are concluded to indicate the potential for the current controlling 8-hour standard to allow the occurrence of 1-hour ambient concentrations that contribute to population estimates of daily maximum COHb levels, that depending on public health judgments in the areas identified above, may be considered to call into question the adequacy of the 1-hour standard and support consideration of revisions of that standard in order to reduce the likelihood of such occurrences in areas just meeting the 8-hour standard. Thus, the Policy Assessment concludes that the combined consideration of the evidence and quantitative estimates may be viewed as providing support for either retaining or revising the current suite of standards.

The Policy Assessment conclusion that it is appropriate to consider retaining the current suite of standards without revision is based on consideration of the health effects evidence in combination with the results of the REA (PA, sections 2.2.1, 2.2.2, 2.3.2 and 2.3.3) and what may be considered reasonable judgments on the public health implications of the COHb levels estimated to occur under the current standard, the public health significance of the CO effects being considered, the weight to be given to findings in the epidemiological studies in locations where the current standards are met, and advice from CASAC. Such a conclusion takes into account the long-standing body of evidence that supports our understanding of the role of COHb in eliciting effects in susceptible populations, most specifically the evidence for those with cardiovascular disease, and gives particular weight to findings of controlled exposure studies of CAD patients in which sensitive indicators of myocardial ischemia were associated with COHb levels resulting from short-duration, high-concentration CO exposures. This conclusion also takes into account uncertainties associated with the differing circumstances of ambient air CO exposures from the CO exposures in the controlled human exposure studies, as well as the unclear public health significance of the size of effects at the lowest studied exposures. As in the last review, this conclusion gives more weight to the significance of the effects observed in these studies at somewhat higher COHb levels. Additionally, this conclusion takes into account judgments in interpreting the public health implications of the REA estimates of COHb associated with ambient exposures based on the application of our current exposure modeling tools, and the size of the at-risk populations estimated to be protected from experiencing daily maximum COHb levels of potential concern by the current standard. Further, this conclusion considers the uncertainties in quantitative interpretations associated with the epidemiological studies to be too great for reliance on information from the few studies where the current standards were met as a basis for selection of alternative standards.

In addition to considering retaining the current suite of standards without revision, the Policy Assessment also concludes that it is reasonable to consider revising the 1-hour standard downward to provide protection from infrequent short-duration peak ambient concentrations that may not be adequately provided by the current standards. While the quantitative analyses for this review focused predominantly on the controlling, 8-hour standard, the analyses have indicated the influential role of elevated 1-hour concentrations in contributing to daily maximum COHb levels over benchmark levels. In addition to the REA results, the Policy Assessment notes the health effects evidence from 1-hour controlled exposures, which indicates the effects in susceptible groups from such short duration exposures. The Policy Assessment interpreted the evidence and REA estimates to indicate support for consideration of a range of 1-hour standard levels which would address the potential for the current 8-hour standard, as the controlling standard, to "average away" high short-duration exposures that may contribute to exposures of concern. Consequently, in considering alternative standard levels, the Policy Assessment focuses on the 1-hour standard as providing the most direct approach for controlling the likelihood of such occurrences.

With regard to a revision of the 1-hour standard, the Policy Assessment identified a range of 1-hour standard levels from 15 to 5 ppm as being an appropriate range for consideration. These levels are in terms of a 99th percentile daily maximum form, averaged over three years, which the Policy Assessment considers to provide increased regulatory stability over the current form. The Policy Assessment additionally takes note of CASAC's preference for a revision to the standards to provide greater protection and observes that the range of 1-hour standard levels discussed is also the range that the CASAC CO Panel suggested was appropriate for consideration.

The Policy Assessment indicates that the upper part of the range of 1-hour standard levels for consideration (11–15 ppm) was identified based on the objective of providing generally equivalent protection, nationally, to that provided by current 8-hour standard and potentially providing increased protection in some areas, such as those with relatively higher 1-hour peaks that are allowed by the current 8-hour standard. This part of the range is estimated to generally correspond to 1-hour CO levels occurring under conditions just meeting the current 8-hour standard based on current relationships between 1-hour and 8-hour average concentrations at current U.S. monitoring locations (PA, Appendix C). The Policy Assessment states that selection of a 1-hour standard within this upper part of the range would be expected to allow for a somewhat similar pattern of ambient CO concentrations as the current, controlling 8-hour standard, although with explicit and independent control against shorter-duration peak concentrations which may contribute to daily maximum COHb levels in those exposed. Consideration of 1-hour standard levels in this part of the range would take into account the factors recognized with regard to the option of retaining the current standards. But it would give greater weight to the importance of limiting 1-hour concentrations that are not controlled by the current 8-hour standard but that may contribute to exceedances of relevant COHb benchmark levels.

The Policy Assessment also concluded that, based on the evidence and REA estimates and alternative judgments regarding appropriate population targets for maximum COHb levels induced by ambient CO exposures, it may be appropriate to consider standard levels that provide additional protection than that afforded by the current standards against the occurrence of short-duration peak ambient CO exposures and associated COHb levels. With this policy objective in mind, the Policy Assessment also described a rationale for consideration of 1-hour standard levels of 9–10 ppm, which comprise the middle part of the range of 1-hour standard levels suggested for consideration (PA, section 2.3.5). Additionally, the Policy

Assessment identified 1-hour standard levels of 5–8 ppm, in the lower part of the range for consideration in light of alternative judgments with regard to the evidence and REA, including the weight to place on public health significance of smaller changes in COHb and the small number of epidemiological studies in areas meeting the current standards (PA, section 2.3.5).

In considering the relative strength of the evidence supporting each of the 3 parts of the range, the Policy Assessment concludes that the upper part of the range is most strongly supported, both with regard to judgments concerning adversity and quantitative interpretation of the epidemiological studies with regard to ambient concentrations that may elicit effects. For the lower parts of the range, the Policy Assessment concludes that support provided by the available information is more limited, especially for the lowest part of the range.

In conjunction with consideration of a revised 1-hour standard, the Policy Assessment, also concludes it is appropriate to consider retaining a standard with an 8-hour averaging time, recognizing that, as when it was established, the 8-hour standard continues to provide protection from multiple-hour ambient CO exposures which may contribute to elevated COHb levels and associated effects. In conjunction with consideration of a revised 1-hour standard, the Policy Assessment additionally describes revision to the 8-hour standard form that may be appropriate to consider to potentially provide greater regulatory stability, with adjustment to level to provide generally equivalent protection as the current 8-hour standard or as a revised 1-hour standard level (PA, section 2.3.5). The range of 8-hour levels identified in the Policy Assessment is inclusive of the range of levels included in the example policy option suggested by CASAC.

3. CASAC Advice

In our consideration of the adequacy of the current standards, in addition to the evidence- and exposure/dose-based information discussed above, we have also considered the advice and recommendations of CASAC, based on their review of the ISA, the REA, and the draft Policy Assessment, as well as comments from the public on drafts of these documents.[55] In these reviews, CASAC has provided an array of advice, both with regard to interpreting the scientific evidence and quantitative exposure/dose assessment, as well as with regard to consideration of the adequacy of the current standards (Brain and Samet, 2009, 2010a, 2010b, 2010c, 2010d).

In their review of the draft ISA, CASAC noted various limitations and uncertainties associated with the evidence, particularly from the epidemiological studies, as noted in section II.D.2.1 above. For example, they recognized limitations in representation of population exposure to ambient CO. Further they noted that "[t]he problem of co-pollutants serving as potential confounders is particularly problematic for CO" and that CO may be serving as a surrogate for a mixture of pollutants generated by fossil fuel combustion (Brain and Samet, 2010d) as well as noting uncertainty regarding the possibility for confounding effects of indoor sources of CO (Brain and Samet, 2010c).

In their comments on the draft PA, the CASAC CO Panel stated overall agreement with staff's conclusion that the body of evidence and the quantitative exposure and risk assessment provide support for retaining or revising the current 8-hour standard. They additionally, however, expressed a "preference" for a lower standard and stated that "[i]f the epidemiological evidence is given additional weight, the conclusion could be drawn that health effects are occurring at levels below the current standard, which would support the tightening of the current standard." Taking this into account, the Panel further advised that "revisions that result in lowering the standard should be considered" (Brain and Samet, 2010c).

As noted in section I.C. above, the final Policy Assessment was completed with consideration of CASAC comments on the draft document, as well as their comments on the second draft REA, and also public comments. Among the revisions made in completing the final Policy Assessment were those based on additional consideration of the epidemiological studies in light of CASAC comments. Discussion of these studies and the complications with regard to their quantitative interpretation is described in section II.D.2.a above, in addition to other evidence-based considerations described in the final Policy Assessment, and is considered in the Administrator's proposed conclusions below.

The few public comments received on this review to date that have addressed adequacy of the current standards conveyed the view that the current standards are adequate. In support of this view, these commenters disagreed with the REA estimates of in-vehicle exposure concentrations and argued that little weight should be given to the epidemiological studies.

4. Administrator's Proposed Conclusions Concerning Adequacy

Based on the large body of evidence concerning the public health impacts of exposure to ambient CO available in this review, the Administrator proposes that the current primary standards provide the requisite protection of public health with an adequate margin of safety and should be retained.

In considering the adequacy of the current standards, the Administrator has carefully considered the available evidence and conclusions contained in the Integrated Science Assessment; the information, exposure/dose assessment, rationale and conclusions presented in the Policy Assessment; the advice and recommendations from CASAC; and public comments to date. In the discussion below, the Administrator considers first the long-standing evidence base concerning effects associated with exposure to CO, including the controlled human exposure studies, and the health significance of responses observed at the 2% COHb level induced by 1-hour CO exposure, as compared to higher COHb levels. As at the time of the review completed in 1994, the Administrator also takes note of the results for the modeling of exposures to ambient CO under conditions simulated to just meet the current, controlling, 8-hour standard in two study areas, as described in the REA and Policy Assessment, and the public health significance of those results. She also considers the newly available and much-expanded epidemiological evidence, including the complexity associated with quantitative interpretation of these studies, particularly the few studies available in areas where the current standards are met. Further, the Administrator considers the advice of CASAC, including both their overall agreement with the Policy Assessment conclusion that the current evidence and quantitative exposure and dose estimates provide support for retaining the current standard, as well as their view that in light of the epidemiological studies, revisions to lower the standards should be considered and their preference for a lower standard.

[55] All written comments submitted to the Agency thus far in this review are available in the docket for this rulemaking, as are transcripts of the public meetings held in conjunction with CASAC's review of the draft PA, of drafts of the REA, and of drafts of the ISA.

As an initial matter, the Administrator takes note of the Policy Assessment's consideration of the long-standing body of evidence for CO, augmented in some aspects since the last review, as summarized in the current Integrated Science Assessment. This long-standing evidence base has established the following key aspects of CO toxicity that are relevant to this review as they were to the review completed in 1994. The common mechanism of CO health effects involves binding of CO to reduced iron in heme proteins and the alteration of their function. Hypoxia (reduced oxygen availability) induced by increased COHb blood levels plays a key role in eliciting CO-related health effects. Accordingly, COHb is commonly used as the bioindicator and dose metric for evaluating CO exposure and the potential for health effects. Further, people with cardiovascular disease are a key population at risk from short-term ambient CO exposures.

With regard to the evidence of health effects associated with ambient CO exposures relevant to this review, the Administrator first recognizes the Integrated Science Assessment's conclusion that a causal relationship is likely to exist between relevant short-term exposures to CO and cardiovascular morbidity. Further, as at the time of the review completed in 1994, the Administrator takes particular note of the evidence from controlled human exposure studies that demonstrates a reduction in time to onset of exercise-induced markers of myocardial ischemia in response to increased COHb resulting from short-term CO exposures, and recognizes the greater significance accorded both to larger reductions in time to myocardial ischemia, and to more frequent occurrences of myocardial ischemia. The Administrator also recognizes the uncertain health significance associated with the smaller responses to the lowest COHb level assessed in the study given primary consideration in this review (Allred *et al.,* 1989a, 1989b, 1991) and with single occurrences of such responses. In the study by Allred *et al.* (1989a, 1989b, 1991), a 4–5% reduction in time (approximately 30 seconds) to the onset of exercise-induced markers of myocardial ischemia was associated with the 2% COHb level induced by 1-hour CO exposure. In considering the significance of the magnitude of the time decrement to onset of myocardial ischemia observed at the 2% COHb level induced by short-term CO exposure, as well as the potential for myocardial ischemia to lead to more adverse outcomes, the EPA generally places less weight on the health significance associated with infrequent or rare occurrences of COHb levels at or just above 2% as compared to that associated with repeated occurrences and occurrences of appreciably higher COHb levels in response to short-term CO exposures. For example, at the 4% COHb level, the study by Allred *et al.,* (1989a, 1989b, 1991) observed a 7–12% reduction in time to the onset of exercise-induced markers of myocardial ischemia. The Administrator places more weight on this greater reduction in time to onset of exercise-induced markers compared to the reduction in time to onset at 2% COHb. The Administrator also notes that at the time of the 1994 review, an intermediate level of approximately 3% COHb was identified as a level at which adverse effects had been demonstrated in persons with angina. Now, as at the time of the 1994 review, the Administrator primarily considers the 2% COHb level, resulting from 1-hour CO exposure, with regard to providing a margin of safety against effects of concern that have been associated with higher COHb levels, such as 3–4% COHb.

As at the time of the last review, the Administrator additionally considers the exposure and dose modeling results, taking note of key limitations and uncertainties associated with the exposure and dose assessment summarized in section II.C.2. above, and in light of judgments above regarding the health significance of findings from the controlled human exposure studies, placing less weight on the health significance of infrequent or rare occurrences of COHb levels at or just above 2% and more weight to the significance of repeated such occurrences, as well as occurrences of higher COHb levels. Under air quality conditions just meeting the current, controlling, 8-hour standard, the assessment estimates that, as was the case for the assessment conducted for the 1994 review, daily maximum COHb levels were below 2% COHb for more than 99.9% of person-days in the study areas evaluated. Further, under these conditions, greater than 99.9% of the at-risk populations in the study areas evaluated would not be expected to experience daily maximum COHb levels at or above 4% COHb, and more than 95% and 98.6% of those populations would be expected to avoid single or multiple occurrences, respectively, at or just above 2% COHb.

The Administrator additionally takes note of the now much-expanded evidence base of epidemiological studies, including the multiple studies that observe positive associations between cardiovascular outcomes and short-term ambient CO concentrations across a range of CO concentrations, including conditions above as well as below the current NAAQS. She notes particularly the Integrated Science Assessment finding that these studies are logically coherent with the larger, long-standing health effects evidence base for CO and the conclusions drawn from it regarding cardiovascular disease-related susceptibility. In further considering the epidemiological evidence base with regard to the extent to which it provides support for conclusions regarding adequacy of the current standards, the Administrator takes note of CASAC's conclusions that "[i]f the epidemiological evidence is given additional weight, the conclusion could be drawn that health effects are occurring at levels below the current standard, which would support the tightening of the current standard" (Brain and Samet, 2010c). Additionally, the Administrator places weight on the final Policy Assessment consideration of aspects that complicate quantitative interpretation of the epidemiological studies with regard to ambient concentrations that might be eliciting the reported health outcomes.

For purposes of evaluating the adequacy of the current standards, there are multiple complicating features of the epidemiological evidence base, as described in more detail in the final Policy Assessment and in section II.D.2.a, above. First, while a number of studies observed positive associations of cardiovascular disease-related outcomes with short-term CO concentrations, very few of these studies were conducted in areas that met the current standards throughout the period of study. In addition, CASAC, in their advice regarding interpretation of the currently available evidence commented that "[t]he problem of co-pollutants serving as potential confounders is particularly problematic for CO" and that given the currently low ambient CO levels, there is a possibility that CO is acting as a surrogate for a mix of pollutants generated by fossil fuel combustion. CASAC further stated that "[a] better understanding of the possible role of co-pollutants is relevant to regulation" (Brain and Samet, 2010d). As described in the Policy Assessment, there are also uncertainties related to representation of ambient CO exposures given the steep concentration gradient near roadways, as well as the prevalence of measurements below the method detection limit across the database. CASAC additionally indicated the need to consider the potential for

confounding effects of indoor sources of CO. As discussed in section II.D.2.a above, the interpretation of epidemiological studies for CO is further complicated because, in contrast to the situation for all other criteria pollutants, the epidemiological studies for CO use an exposure/dose metric (air concentration) that differs from the metric commonly used in the other key CO health studies (COHb).

Although CASAC expressed a preference for a lower standard, CASAC also indicated that the current evidence provides support for retaining the current suite of standards. CASAC's recommendations appear to recognize that their preference for a lower standard was contingent on a judgment as to the weight to be placed on the epidemiological evidence. For the reasons explained above, after full consideration of CASAC's advice and the epidemiological evidence, as well as its associated uncertainties and limitations, the Administrator judges those uncertainties and limitations to be too great for the epidemiological evidence to provide a basis for revising the current standards.

In considering the adequacy of the level of protection provided by the current standards, the Administrator notes the findings of the exposure and dose assessment in light of considerations discussed above regarding the weight given to different COHb levels and their frequency of occurrence. The exposure and dose assessment results indicate that only a very small percentage of the at-risk population is estimated to experience a single occurrence in a year of daily maximum COHb at or above 3.0% COHb under conditions just meeting the current 8-hour standard in the two study areas evaluated, and no multiple occurrences are estimated. The Administrator also notes the results indicating that only a small percentage of the at-risk populations are estimated to experience a single occurrence of 2% COHb in a year under conditions just meeting the standard, and still fewer estimated to experience multiple such occurrences. Taken together, the Administrator considers the current standard to provide a very high degree of protection for the COHb levels and associated health effects of concern, as indicated by the extremely low estimates of occurrences, and provides slightly less but a still high degree of protection for the effects associated with lower COHb levels, the physiological significance of which is less clear. Additionally, the Administrator proposes to conclude that consideration of the epidemiological studies does not lead her to identify a need for any greater protection. Thus, the Administrator proposes to conclude that the current suite of standards provides an adequate margin of safety against adverse effects associated with short-term ambient CO exposures. For these and all of the reasons discussed above, and recognizing the CASAC conclusion that, overall, the current evidence and REA results provide support for retaining the current standard, the Administrator proposes to conclude that the current suite of primary CO standards are requisite to protect public health with an adequate margin of safety from effects of ambient CO.

The Administrator also solicits comment on whether it would be appropriate to revise the current primary standards. The Administrator takes note that, while CASAC indicated their view that the evidence and exposure and dose estimates provide support for retaining the current NAAQS, they also indicated their preference for a lower standard. For example, the CASAC CO Panel stated that giving additional weight to the epidemiological evidence would support a tightening of the current standard. The Administrator also takes note of the Policy Assessment conclusions, summarized in section II.D.2.c above. Thus, in light of views expressed by CASAC, as well as the Policy Assessment conclusions, the Administrator additionally solicits comment on the appropriateness of potential revisions to the form and level of the standards. Any comments on such revisions should include an explanation of the basis for the commenters' views.

E. Summary of Proposed Decisions on Primary Standards

For the reasons discussed above, and taking into account information and assessments presented in the Integrated Science Assessment and Policy Assessment, the advice and recommendations of CASAC, and the public comments to date, the Administrator proposes to retain the existing suite of primary CO standards. Additionally, the Administrator solicits comment on the appropriateness of revisions to the form and level of the standards.

III. Consideration of a Secondary Standard

This section focuses on the key policy-relevant issues related to the review of public welfare-related effects of CO. Under section 109(b) of the Clean Air Act, a secondary standard is to be established at a level "requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in ambient air." Section 302(h) of the Act defines effects on welfare in part as "effects on soils, water, crops, vegetation, man-made materials, animals, weather, visibility, and climate." We first summarize the history of EPA's consideration of secondary standards for CO in section III.A. In section III.B, we then discuss the evidence currently available for welfare effects to inform decisions in this review as to whether, and if so how, to establish secondary standards for CO based on public welfare considerations as presented in the Policy Assessment. Advice from CASAC is summarized in section III.C. Lastly, the Administrator's proposed conclusions are presented in section III.D.

A. Background and Considerations in Previous Reviews

With the establishment of the first NAAQS for CO in 1971, secondary standards were set identical to the primary standards. CO was not shown to produce detrimental effects on certain higher plants at levels below 100 ppm. The only significant welfare effect identified for CO levels possibly approaching those in ambient air was inhibition of nitrogen fixation by microorganisms in the root nodules of legumes associated with CO levels of 100 ppm for one month (U.S. DHEW, 1970). In the first review of the CO NAAQS, which was completed in 1985, the threshold level for plant effects was recognized to occur well above ambient CO levels, such that vegetation damage as a result of CO in ambient air was concluded to be very unlikely (50 FR 37494). As a result, EPA concluded that the evidence did not support maintaining a secondary standard for CO, as welfare-related effects had not been documented to occur at ambient concentrations (50 FR 37494). Based on that conclusion, EPA revoked the secondary standard. In the most recent review of CO, which was completed in 1994, EPA again concluded there was insufficient evidence of welfare effects occurring at or near ambient levels to support setting a secondary NAAQS (59 FR 38906). That review did not consider climate-related effects.

B. Evidence-Based Considerations in the Policy Assessment

To evaluate whether establishment of a secondary standard for CO is appropriate, we adopted an approach in this review that builds upon the general approach used in the last review and reflects the broader body of evidence

and information now available. Considerations of the evidence available in this review in the Policy Assessment were organized around the following overarching question: Does the currently available scientific information provide support for considering the establishment of a secondary standard for CO?

In considering this overarching question, the Policy Assessment first noted that the extensive literature search performed for the current review did not identify any evidence of ecological effects of CO unrelated to climate-related effects, at or near ambient levels (ISA, section 1.3 and p. 1–3). However, ambient CO has been associated with welfare effects related to climate (ISA, section 3.3). Climate-related effects of CO were considered for the first time in the 2000 AQCD. The greater focus on climate in the current ISA relative to the 2000 AQCD reflects comments from CASAC and increased attention to the role of CO in climate forcing (Brain and Samet, 2009; ISA, section 3.3). Based on the current evidence, the ISA concludes that "a causal relationship exists between current atmospheric concentrations of CO and effects on climate" (ISA, section 2.2). Accordingly, the following discussion focuses on climate-related effects of CO in addressing the question posed above.

As concluded in the Policy Assessment, recently available information does not alter the current well-established understanding of the role of urban and regional CO in continental and global-scale chemistry, as outlined in the 2000 AQCD (PA, section 3.2). As recognized in the ISA, CO is a weak direct contributor to greenhouse warming. The most significant effects on climate result indirectly from CO chemistry, related to the role of CO as the major atmospheric sink for hydroxyl radicals. Increased concentrations of CO can lead to increased concentrations of other gases whose loss processes also involve hydroxyl radical chemistry. Some of these gases, such as methane and ozone (O_3), contribute to the greenhouse effect directly while others deplete stratospheric O_3 (ISA, section 3.3 and p. 3–11).

Advances in modeling and measurement have improved our understanding of the relative contribution of CO to climate forcing (PA, section 3.2). CO contributes to climate forcing through both direct radiative forcing (RF) of CO, estimated at 0.024 watts per square meter (W/m^2) by Sinha and Toumi (1996), and indirect effects of CO on climate through methane, O_3 and carbon dioxide (Forster *et al.* 2007). The Intergovernmental Panel on Climate Change estimated the combined RF for these indirect effects of CO to be ~0.2 W/m^2 over the period 1750–2005 (Forster *et al.,* 2007), with more than one-half of the forcing attributed to O_3 formation (ISA, section 3.3 and p. 3–13).

As discussed in the Policy Assessment, CO is classified as a short-lived climate forcing agent, prompting CO emission reductions to be considered as a possible strategy to mitigate effects of global warming (PA, section 3.2). However, in considering the information presented in the ISA, the Policy Assessment notes that it is highly problematic to evaluate the indirect effects of CO on climate due to the spatial and temporal variation in emissions and concentrations of CO and due to the localized chemical interdependencies involving CO, methane, and O_3 (ISA section 3.3 and p. 3–12). Most climate model simulations are based on global-scale scenarios and have a high degree of uncertainty associated with short-lived climate forcers such as CO (ISA, section 3.3 and p. 3–16). These models may fail to consider the local variations in climate forcing due to emissions sources and local meteorological patterns (ISA, section 3.3 and p. 3–16). It is possible to compute individual contributions to RF of CO from separate emissions sectors, although uncertainty in these estimates has not been quantified (ISA, section 3.3, p. 3–13 and Figure 3–7).

Uncertainties in the estimates of the indirect RF from CO are noted in the Policy Assessment to be related to uncertainties in the chemical interdependencies of CO and trace gases, as described above. Large regional variations in CO concentrations also contribute to the uncertainties in the RF from CO and other trace gases (ISA section 3.3 and p. 3–12). Although measurement of and techniques for assessing climate forcing are improving, estimates of RF still have approximately 50% uncertainty (ISA, section 3.3, and p. 3–13).

In summary, the Policy Assessment drew the following conclusions based on the considerations identified above. As an initial matter, with respect to non-climate welfare effects, including ecological effects and impacts to vegetation, the Policy Assessment concluded that there is no currently available scientific information that supports a CO secondary standard (PA, section 3.4). Secondly, with respect to climate-related effects, the Policy Assessment recognized the evidence of climate forcing effects associated with CO (ISA, sections 2.2 and 3.3), while also noting that the available information provides no basis for estimating how localized changes in the temporal and spatial patterns of ambient CO likely to occur across the U.S. with (or without) a secondary standard would affect local, regional, or nationwide changes in climate. Moreover, more than half of the indirect forcing effect of CO is attributable to O_3 formation, and welfare-related effects of O_3 are more appropriately considered in the context of the review of the O_3 NAAQS, rather than in this CO NAAQS review (PA, section 3.4). For these reasons, the Policy Assessment concluded that there is insufficient information at this time to support the consideration of a secondary standard based on CO effects on climate processes (PA, section 3.4).

C. CASAC Advice

In consideration of a secondary standard, in addition to the evidence discussed above, EPA has also considered the advice and recommendations of CASAC, based on their review of the ISA, and the draft Policy Assessment.[56]

In their comments on the draft Policy Assessment, CASAC took note of the substantial evidence that CO has adverse effects on climate and recommended that staff summarize information that is currently lacking and would assist in consideration of a secondary standard in the future (ISA, sections 3.2 and 3.3; Brain and Samet, 2010c).[57] CASAC noted without objection or disagreement the staff's conclusions that there is insufficient information to support consideration of a secondary standard at this time (Brain and Samet, 2010c).

D. Administrator's Proposed Conclusions Concerning a Secondary Standard

The proposed conclusions presented here are based on the assessment and integrative synthesis of the scientific evidence presented in the ISA, building on the evidence described in the 2000 AQCD, as well as staff consideration of this evidence in the Policy Assessment and CASAC advice. In considering whether the currently available scientific information supports setting a secondary standard for CO, EPA takes note of the Policy Assessment consideration of the body of available evidence (briefly summarized above in

[56] Thus far in this review, no public comments have been received regarding the secondary standard.

[57] This recommendation is addressed in section 3.5 of the Policy Assessment.

section III.B). First, EPA concludes that the currently available scientific information with respect to non-climate welfare effects, including ecological effects and impacts to vegetation, does not support a CO secondary standard. Secondly, with respect to climate-related effects, the EPA takes note of staff considerations in the Policy Assessment and concurs with staff conclusions that this information is insufficient at this time to provide support for a CO secondary standard. Thus, in considering the evidence, staff considerations in the Policy Assessment summarized here, as well as the views of CASAC, summarized above, the Administrator proposes to conclude that no secondary standards should be set at this time because, as in the past reviews, having no standard is requisite to protect public welfare from any known or anticipated adverse effects from ambient CO exposures.

IV. Proposed Amendments to Ambient Monitoring Requirements

The EPA is proposing changes to the ambient air monitoring network design requirements to support the NAAQS for CO discussed above in section II. Because the availability of ambient CO monitoring data is an essential element of the NAAQS implementation framework, EPA is proposing to revise the requirements for the ambient CO monitoring network to include a minimum set of monitors to provide data for comparison to the NAAQS (*i.e.,* for determining whether areas are attaining the standards) in locations near roads where CO emissions associated with mobile source related activity lead to increased ambient concentrations. Under such requirements, State, local, and Tribal monitoring agencies ("monitoring agencies") collect ambient CO monitoring data in accordance with the monitoring requirements contained in 40 CFR parts 50, 53, and 58 for comparison to the NAAQS and to meet other objectives.

A. Monitoring Methods

Ambient air monitoring data are used for various purposes, including determining compliance with the NAAQS. The use of reference methods provides uniform, reproducible measurements of pollutant concentrations in ambient air. Equivalent methods allow for the introduction of new or alternative technologies for the same purpose, provided these methods produce measurements directly comparable to the reference methods. EPA has established procedures for determining and designating reference and equivalent methods, known as Federal Reference Methods (FRMs) and Federal Equivalent Methods (FEMs), at 40 CFR part 53.

Ambient air monitoring data for CO must be obtained using an FRM or an FEM, as defined in 40 CFR parts 50 and 53, for such data to be comparable to the NAAQS for CO. All CO monitoring methods in use currently by State and local monitoring agencies are EPA-designated FRM analyzers (USEPA, 2010f). No FEM analyzer, *i.e.* one using an alternative measurement principle, has yet been designated by EPA for CO. These continuous FRM analyzers have been used in monitoring networks for many years (USEPA, 2010f) and provide CO monitoring data adequate for determining CO NAAQS compliance. The current list of all approved FRMs capable of providing ambient CO data for this purpose may be found on the EPA Web site, *http://www.epa.gov/ttn/amtic/files/ambient/criteria/reference-equivalent-methods-list.pdf.* Although both the existing CO FRM in 40 CFR part 50 and the FRM and FEM designation requirements in part 53 remain adequate to support the CO NAAQS, EPA is nevertheless proposing editorial revisions to the CO FRM and both technical and editorial revisions to part 53, as discussed below.

1. Proposed Changes to Part 50, Appendix C

Reference methods for criteria pollutants are described in several appendices to 40 CFR part 50; the CO FRM is set forth in appendix C of part 50. A nondispersive infrared photometry (NDIR) measurement principle is formally prescribed as the basis for the CO FRM. Appendix C describes the technical nature of the NDIR measurement principle stipulated for FRM CO analyzers as well as two acceptable calibration procedures for CO FRM analyzers. It further requires that an FRM analyzer must meet specific performance, performance testing, and other requirements set forth in 40 CFR part 53.

From time to time, as pollutant measurement technology advances, EPA assesses the FRMs in the 40 CFR part 50 FRM appendices to determine if they are still adequate or if improved or more suitable measurement technology has become available to better meet current FRM needs as well as potential future FRM requirements. The CO FRM was originally promulgated on April 30, 1971 (36 FR 8186), in conjunction with EPA's establishment (originally as 42 CFR part 410) of the first NAAQS for six pollutants (including CO) as now set forth in 40 CFR part 50. The method was amended in 1982 and 1983 (47 FR 54922; 48 FR 17355) to incorporate minor updates, but no substantive changes in the fundamental NDIR measurement technique have been made since its original promulgation. (Those updates included clarification that the FRM NDIR measurement principle encompassed the specific "gas filter correlation" measurement technique now used by many commercial FRM analyzers.).

In connection with the current review of the NAAQS for CO, EPA is proposing to again update the existing CO FRM—with no substantive changes—as explained in further detail below. This action is based on the scientific view that the CO FRM, as originally established and updated in the 1980's, is still fully adequate for FRM purposes and is fulfilling that role well. Further, the FRM is also well suited for use in routine CO monitoring, and several high quality FRM analyzer models have been available for many years and continue to be offered and supported by multiple analyzer manufacturers. Finally, EPA has determined that no new ambient CO measurement technique has become available that is superior to the NDIR technique specified for the current FRM.

While EPA believes that the current CO FRM is adequate, we also believe that the existing CO FRM should be improved by implementing updates to clarify the language of some provisions, to make the format match more closely the format of more recently promulgated automated FRMs, and to better reflect the design and improved performance of current, commercially available CO FRM analyzers. EPA found that no substantive changes were needed to the basic NDIR FRM measurement principle; therefore, the proposed updates are of a very minor, editorial nature. However, these proposed changes are numerous enough so that EPA is proposing to re-promulgate the entire CO FRM in appendix C of 40 CFR part 50, replacing the existing FRM language with revised language.

2. Proposed Changes to Part 53

In close association with the proposed editorial revision to the CO FRM described above, EPA is also proposing to update the performance requirements for FRM CO analyzers currently contained in 40 CFR part 53. These requirements were established in the 1970's, based primarily on the NDIR CO measurement technology available at that time. While the fundamental NDIR measurement principle, as implemented in commercial FRM analyzers, has changed little over several decades,

FRM analyzer performance has improved markedly. Contemporary advances in digital electronics, sensor technology, and manufacturing capabilities have permitted today's NDIR analyzers to exhibit substantially improved measurement performance, reliability, and operational convenience at modest cost. This improved instrument performance is not reflected in the current performance requirements for CO FRM analyzers specified in 40 CFR part 53, indicating a need for an update to reflect that improved performance. The updated part 53 performance requirements would also apply to candidate FEM CO analyzers, if any new, alternative CO measurement technology should be developed.

As noted previously, the performance of FRM analyzers designated under the presently specified performance requirements of Part 53 is fully adequate for current monitoring needs. A review of analyzer manufacturers' specifications has determined that all existing CO analyzer models currently in use in the monitoring network already meet the proposed new requirements (for the standard measurement range). Upgrading the analyzer performance requirements to be more consistent with the typical performance capability available in contemporary FRM analyzers would ensure that newly designated FRM analyzers will have this improved measurement performance. Therefore, EPA believes that the Part 53 requirements should be updated to be at least commensurate with this typical level of CO analyzer performance. In addition, this modernization also provides for optional, new performance requirements applicable to lower, more sensitive measurement ranges that would support improved monitoring data quality in areas of low CO concentrations. Accordingly, EPA is proposing to amend the performance requirements applicable to CO FRMs (and any new FEMs) set forth in subpart B of 40 CFR part 53, as described in the following discussion.

Subpart B of 40 CFR part 53 prescribes explicit test procedures to be used for testing specified performance aspects of candidate FRM and FEM analyzers, along with the minimum performance requirements that such analyzers must meet to qualify for FRM or FEM designation. These performance requirements are specified in Table B–1 of subpart B. Although Table B–1 covers candidate methods for SO_2, O_3, CO, and NO_2, the updates to Table B–1 that EPA is now proposing would be applicable only to candidate methods for CO.

Some updated performance requirements are being proposed for candidate CO analyzers that operate on the specified "standard" measurement range (0 to 50 ppm). This measurement range would remain unchanged from the existing requirements as it appropriately addresses the monitoring data needed for assessing attainment. However, based on EPA's review of the performance of currently available CO FRM analyzers (USEPA, 2010g), EPA is proposing revised performance requirements for CO analyzers in Table B–1, as follows. The measurement noise limit would be reduced from 0.5 to 0.2 ppm, and the lower detectable limit would be reduced from 1 to 0.4 ppm. Zero drift would be reduced from 1.0 to 0.5 ppm, and span drift would be lowered from 2.5% to 2.0%. The existing mid-span drift requirement, tested at 20% of the upper range limit (URL), would be withdrawn. EPA has found that the mid-span drift requirement is unnecessary for CO instruments because the upper level span drift (tested at 80% of the URL) completely and much more accurately defines analyzer span drift performance.

EPA proposes to change the lag time allowed from 10 to 2 minutes, and the rise and fall times from 5 to 2 minutes. For precision, EPA proposes to change the form of the precision limit specifications from an absolute measure (ppm) to percent (of the URL) for CO analyzers and to set the limit at 1 percent for both 20% and 80% of the URL. One percent is equivalent to the existing limit value of 0.5 ppm for precision for the standard (50 ppm) measurement range. This change in units from ppm to percent will make the requirement responsive to higher and lower measurement ranges (*i.e.,* more demanding for lower ranges).

The interference equivalent limit of 1 ppm for each interferent would not be changed, but EPA proposes to withdraw the existing limit requirement for the total of all interferents. EPA has found that the total interferent limit is redundant with the individual interferent limit for modern CO analyzers.

These proposed new performance requirements would apply only to newly designated CO FRM or FEM analyzers. Essentially all existing FRM analyzers in use today, as noted previously, are providing CO monitoring data of adequate quality and fulfill the proposed requirements. Thus, existing FRM analyzers would not be required to be re-tested and re-designated under the proposed new requirements. All currently designated FRM analyzers would retain their original FRM designations.

EPA recognizes that some CO monitoring objectives (*e.g.,* area-wide monitoring away from major roads and rural area surveillance) require analyzers with lower, more sensitive measurement ranges than the standard range used for typical ambient monitoring. Part 53 (40 CFR 53.20(b)) allows an FRM or FEM designation to include lower ranges. To make such lower-range measurements more meaningful, EPA is proposing a separate set of performance requirements that would apply specifically to lower ranges (*i.e.,* those having a URL of less than 50 ppm) for CO analyzers. The proposed additional, lower-range requirements are listed in the proposed revised Table B–1. A candidate analyzer that meets the Table B–1 requirements for the standard measurement range (0 to 50 ppm) could optionally have one or more lower ranges included in its FRM or FEM designation by further testing to show that it also meets these proposed supplemental, lower-range requirements.

Although no substantive changes have been determined to be needed to the test procedures and associated provisions of subpart B for CO, the detailed language in many of the subpart B sections is in need of significant updates, clarifications, refinement, and (in a few cases) correction of minor typographical errors. EPA believes that these provisions should be amended at this time in its on-going, pollutant-by-pollutant effort to bring the entire content of subpart B fully up to date.

The proposed changes to the subpart B text (apart from the changes proposed for Table B–1 discussed above) are very minor and almost entirely editorial in nature, with no changes to the substance of the requirements. However, because these small changes are quite numerous, EPA believes that it is expedient and advantageous to propose replacement of the subpart B text, in its entirety, with the modified text. As discussed previously, Table B–1, which sets forth the pollutant-specific performance limits and was recently amended as applicable primarily to SO_2 analyzers, would be amended at this time only as necessary and applicable to CO analyzers. EPA intends to amend Table B–1 for the remaining pollutant methods (O_3 and NO_2) later, at such time as each of those pollutants—along with its associated FRM in part 50—is addressed specifically.

3. Implications for Air Monitoring Networks

As noted previously, existing CO FRM analyzers (no CO FEMs are presently available) are currently providing monitoring data that are adequate for the current CO NAAQS. Although EPA is proposing to re-promulgate the entire CO FRM, the changes are minor, with no substantive changes being proposed. Thus, this action would have little, if any, effect on existing air monitoring networks. Similarly, EPA is proposing revisions to subpart B of part 53, which specifies the testing and performance requirements for FRM and FEM analyzers. Again, the changes are minor, with the exception of the CO analyzer performance requirements in Table B–1, which EPA is proposing to make more consistent with modern CO analyzers representative of monitors used in the current CO monitoring network. These new requirements would be used for designation of new CO FRM and FEM analyzers. Existing EPA-designated FRMs would be unaffected by the proposed changes and would continue to be designated. As most commercially available CO FRM analyzers already meet the proposed new performance requirements, the cost of new CO analyzers that would meet the proposed new performance requirements would not be increased by the proposed new requirements. Therefore, there would be no immediate impact on monitoring agencies or on their CO monitoring networks due to the proposed amendments to the CO FRM and the associated new performance requirements proposed for subpart B.

In the longer term, the proposed new performance requirements would ensure that CO network monitors, going forward, would maintain their improved performance. Monitoring agencies would benefit by having greater confidence in their CO monitoring data quality, particularly at the lower ambient levels prevalent in most areas. Further, the assurance of increased CO data quality in years to come will provide better databases to support future reviews of the CO NAAQS.

B. Network Design

The objectives of an ambient monitoring network include the collection and dissemination of air pollution data to the general public in a timely manner, to determine compliance with ambient air quality standards and the effectiveness of emissions control strategies, and to provide support for air pollution research (40 CFR part 58, appendix D). This section on CO network design provides background on the monitoring network, information on the sources of CO, information on factors affecting CO emissions, and provides rationale for a proposed network design intended to support the implementation of the CO NAAQS.

1. Background

EPA issued the first regulations for ambient air quality surveillance, codified at 40 CFR part 58, for criteria pollutants including CO in 1979 (44 FR 27558, May 10, 1979). These 1979 regulations established a monitoring network for CO (described in detail in the CO Network Review and Background document [Watkins and Thompson, 2010]) that required two CO monitors in urban areas with 500,000 or more people. The first of these two monitors was a "peak" concentration monitor, intended to be located in areas "* * * around major traffic arteries and near heavily traveled streets in downtown areas." The second monitor was intended to represent a wider geographic area, particularly at neighborhood scales "where concentration exposures are significant." The 2006 monitoring rule (Revisions to Ambient Air Monitoring Regulations, 71 FR 61236 (October 17, 2006)) removed the minimum monitoring requirements for the ambient CO monitoring network that were promulgated in 1979. However, the 2006 monitoring rule maintained a requirement that if there was ongoing CO monitoring in an area, the area must have at least one monitor located to measure maximum concentration of CO in that area. The 2006 monitoring rule also included a provision requiring the approval of the EPA Regional Administrator before any existing CO ambient monitors could be removed. Finally, the 2006 monitoring rule included a requirement for CO monitors to be operated at all National Core (NCore) multi-pollutant monitoring stations; with approximately 80 stations projected to have been operational nationwide by January 1, 2011 to support multi-pollutant monitoring objectives.

An analysis of the available CO monitoring network data in the Air Quality System (AQS) database shows that the network was comprised of approximately 345 monitors during 2009. Information stored in AQS for these monitors describes the most frequently stated monitor objectives for sites in the current CO network as assessment of concentrations for general population exposure and maximum (highest) concentrations at the neighborhood scale.[58] Approximately 56 of the monitors operating in 2009 were at microscale sites, a majority of which were likely sites representing "peak" concentrations which were required under the monitoring regulations originally promulgated in 1979, intended to characterize mobile source impacts in heavily traveled downtown streets or near major arterial roads (Watkins and Thompson, 2010). The rest of these sites were likely being operated to meet objectives including NAAQS comparison, to support long-term trend determination, to meet State Implementation Plan (SIP) and maintenance plan requirements, and to support ongoing health studies.

2. On-Road Mobile Sources

The REA for this review notes that "motor vehicle emissions continue to be important contributors to ambient CO concentrations" (REA, section 2.2). Microenvironments influenced by on-road mobile sources are important contributors to ambient CO exposures, particularly in urban areas (REA, section 2.7), as indicated by personal exposure studies that have generally shown that the highest ambient CO exposure levels occur while people are in transit in motor vehicles (ISA, section 2.3). Mobile sources are the primary contributors to ambient CO emissions because CO is formed by incomplete combustion of carbon-containing fossil fuels widely used in motor vehicles (ISA, section 2.1; REA, section 3.3). Further, spark-ignition engines (gasoline or light-duty engines) have higher CO emission rates than diesel engines (heavy-duty engines) because they typically operate closer to the stoichiometric air-to-fuel ratio, have

[58] Spatial scales are defined in 40 CFR part 58 Appendix D, Section 1.2, where the scales of representativeness of most interest for the monitoring site types include:

1. Microscale—Defines the concentration in air volumes associated with area dimensions ranging from several meters up to about 100 meters.

2. Middle scale—Defines the concentration typical of areas up to several city blocks in size, with dimensions ranging from about 100 meters to 0.5 kilometers.

3. Neighborhood scale—Defines concentrations within some extended area of the city that has relatively uniform land use with dimensions in the 0.5 to 4.0 kilometers range.

4. Urban scale—Defines concentrations within an area of city-like dimensions, on the order of 4 to 50 kilometers. Within a city, the geographic placement of sources may result in there being no single site that can be said to represent air quality on an urban scale. The neighborhood and urban scales have the potential to overlap in applications that concern secondarily formed or homogeneously distributed air pollutants.

5. Regional scale—Defines usually a rural area of reasonably homogeneous geography without large sources, and extends from tens to hundreds of kilometers.

relatively short residence times at peak combustion temperatures, and have very rapid cooling of cylinder exhaust gases (ISA, section 3.2.1).

Ambient CO concentrations have significantly declined over the past 20 years, reflecting reductions in on-road vehicle emissions, as described in section II.A above. Overall, based on the 2002 National Emissions Inventory (NEI), on-road mobile sources account for approximately 52% of total CO emissions. Based on the more recent 2005 NEI, the contributions of on-road mobile sources has now risen to approximately 60% of the total CO emissions inventory (not counting wildfire emissions) (*http://www.epa.gov/ttn/chief/eiinformation.html*). As described in section II.A above, in some metropolitan areas in the U.S., as much as 75% of all CO emissions result from on-road vehicle exhaust (ISA, section 2.1).

On-road vehicle CO emission rates vary depending on operating conditions, such as cold-start conditions and operating speed. Under cold start conditions, which only last for the first minutes of vehicle operation, CO emissions are higher due to temporary ineffectiveness of vehicle exhaust catalysts until they are heated to optimal operating temperatures (ISA, section 3.2.1; Singer *et al.,* 1999). Meanwhile, CO emissions also vary based on vehicle operating speeds. Increased CO emissions occur under conditions of high acceleration, rapid speed fluctuations, and heavy vehicle loads (ISA, section 3.2.1). Studies have found that CO emission rates for tested light-duty vehicles are highest for accelerating vehicles, second highest for vehicles in cruise, third highest for vehicles under deceleration, and fourth highest (of four operating speed related categories) for vehicles at idle (Frey *et al.,* 2003). High acceleration and rapid speed fluctuations (such as acceleration and deceleration occurring over a short time period) can be associated with congested, stop-and-go traffic conditions.

3. Near-Road Environment

Information in the ISA and other peer-reviewed literature suggest that concentrations of mobile source pollutants, such as CO, typically display peak concentrations on or immediately adjacent to roads, typically producing a gradient in pollutant concentrations where concentrations decrease with increasing distance from roads (ISA, section 2.3; ISA, section 3.5.1.3; Baldauf *et al.,* 2008; Clements *et al.,* 2009; Karner *et al.,* 2010; Zhou and Levy, 2008; Zhu *et al.,* 2002). CO is emitted by on-road mobile sources, and is not secondarily formed in the near-road environment like NO_2 (which is both primarily emitted and secondarily formed in the near-road environment). As a result, the near-road gradient for CO can be quite steep, where concentrations rapidly decay with increasing distance away from the road when compared to other mobile source pollutants such as NO_2. Karner *et al.* (2010), synthesized findings from 41 near-road pollutant monitoring studies ranging from 1978 through June 2008 to advance the understanding of on-road mobile source pollutant dispersion. They performed two regression analyses, one being a local regression of background normalized concentrations on distance, and the second being a local regression of edge [of road] normalized concentrations on distance. These analyses found CO to have the highest approximate edge-of-road peaks, as much as 21 times background concentrations, of all pollutants analyzed, and also showed CO to have one of the fastest decay rates with increasing distance from the road, showing as much as a 90 percent drop in concentration 150 meters from the edge of the road. A key reason in the difference in decay rate with increasing distance from roads between CO and NO_2 is due to how the two pollutants are introduced into the near-road environment. CO is a primary emission from motor vehicle fuel combustion, while NO_2 is both emitted as a primary emission and secondarily formed in the near-road environment. The *Integrated Science Assessment for Oxides of Nitrogen—Health Criteria* (NO_X ISA; USEPA, 2008d) notes that the direct emission of NO_2 from mobile sources is estimated to be only a few percent of the total NO_X emissions for light duty gasoline vehicles, and from less than 10 percent up to 70 percent of the total NO_X emission from heavy duty diesel vehicles, depending on the engine, the use of emission control technologies such as catalyzed diesel particulate filters (CDPFs), and mode of vehicle operation. Although much of the NO_X emissions are initially in the form of NO, the rate of conversion of NO to NO_2 is generally a rapid process (*i.e.,* on the order of a minute) (NO_X ISA, section 2.2.2). Thus, more of the NO_2 in the near-road environment is a result of secondary formation than from primary emissions, while CO is almost exclusively a result of direct emissions from tailpipes.

Overall, the literature suggests that CO concentrations generally return to near-background levels within a few hundred meters from the road (Karner *et al.,* 2010; Zhou and Levy, 2007). The actual concentrations of CO, and other mobile source pollutants such as NO_X and particulate matter, that occur in the near-road environment, and the rate of decay of those pollutant concentrations with increasing distance from the road, are dependent on a number of variables including traffic volume, traffic fleet mix, roadway type, roadway design, surrounding features, topography (or terrain), and meteorology (Baldauf *et al.,* 2009; Baldauf *et al.,* 2008; Clements *et al.,* 2009; Hagler *et al.,* 2010; Heist *et al.,* 2009). EPA notes that these factors were taken into account in the requirements for the near-road NO_2 monitoring network, promulgated in February 2010 (75 FR 6474), which required near-road NO_2 sites to be selected with consideration given to traffic volume (via use of Annual Average Daily Traffic [AADT] counts), fleet mix, congestion patterns, roadway design, terrain, and meteorology.

4. Urban Downtown Areas and Urban Street Canyons

As noted above in section IV.B.2, increased CO emissions occur under operating conditions of high acceleration, rapid speed fluctuations (such as acceleration and deceleration occurring over a short time period), and increased vehicle loads (ISA, section 3.2.1). High acceleration and rapid speed fluctuations can be associated with congested traffic conditions, such as stop-and-go traffic, which can occur on heavily trafficked roads such as highways, freeways, and along major arterial roads, and also along roads with multiple intersections in relatively close proximity to each other. Thus, elevated CO concentrations, relative to surrounding background concentrations, can occur not only along heavily trafficked roads but also may be found in urban downtown areas, where a relatively higher number of roads exist in an area (high density of roads per unit area) and a relatively higher density of roadway intersections exist in an area (high roadway intersection per unit area), which can lead to increased occurrences of vehicles operating under modes of high acceleration and/or rapid speed fluctuations. Even though streets in urban downtown areas may not individually carry as much traffic as larger highways, freeways, or major arterials, the impact of many relatively smaller streets in close proximity carrying traffic experiencing periods of high acceleration and/or rapid speed fluctuations, or congested traffic, may collectively contribute to elevated CO concentrations in that downtown area.

In addition to traffic undergoing periods of high acceleration and/or rapid speed fluctuations or experiencing general traffic congestion, urban downtown areas often have a number of relatively tall buildings, typically in close proximity to each other. Such configurations of tall buildings in relatively close proximity often create urban features called urban canyons or urban street canyons. Although the term urban canyon, or urban street canyon, is not formally defined, it can generally be described as an urban feature, resembling a natural canyon [59], where streets or roads exist within dense blocks of relatively tall buildings. These urban features are of interest because, as noted in the ISA, recent research by Kaur and Nieuwenhuijsen (2009), and Carlaw *et al.* (2007), suggest CO concentrations are related to traffic volume and fleet mix in the urban street canyon environment, which can influence potential exposures. EPA has had monitoring requirements in the past that characterized concentrations of CO in heavily trafficked downtown streets, *i.e.* "urban street canyons," (Watkins and Thompson, 2010), and notes such locations may have still have relevance going forward.

5. Meteorological and Topographical Influences

In 2003, the National Research Council (NRC) of the National Academies published a document titled *Managing Carbon Monoxide Pollution in Meteorological and Topographical Problem Areas.* This report noted how drastically ambient CO concentrations had dropped across the country from the 1970s through the early 2000s, and that some of the remaining areas of the country that continued to have relatively high concentrations tended to have meteorological and topographical characteristics that exacerbate pollution. In particular, meteorological impacts can concentrate pollutant build-up in an area due to atmospheric inversions and cold temperatures. Atmospheric inversions essentially prevent pollutant emissions in an area from dispersing through vertical mixing. As explained by the NRC (NRC, 2003), the extent to which air mixes vertically depends on how the air temperature changes with altitude. Warm air is less dense than cold air and thus more buoyant, allowing surface air to mix upward as relatively warmer air rises in the atmosphere. However, if the vertical temperature profile is such that temperatures decrease more slowly than normal, or increase with height, vertical mixing is inhibited. Inversions can be caused by several different specific phenomena, including surface based cooling (for example, due to snow on the ground), due to high altitudes, and sometimes due to warm air advection at higher altitudes.

The topographical impacts that can lead to pollutant build-up in an area are typically due to physical terrain features that may aid in trapping pollution in an area and/or contribute to meteorological related inversions. An example of topographical impacts might be an urban area within a valley, or surrounded on several sides by mountain ranges. In such a case, pollutant dispersion is inhibited in the horizontal, with terrain features effectively preventing mixing or transport of pollution from a given area. Further, in some cases both meteorological and topographical impacts can combine to exacerbate pollutant build-up, such as in an area partially surrounded by high terrain which is also subject to inversions.

Although there is available information on what can cause increased potential for air pollutant build-up due to meteorological and topographical impacts, there are no easily defined or applied criteria that could be implemented nationally by which all such locations could be identified. Identification of such locations would require a case-by-case approach, where localized and detailed information on terrain and meteorology would be needed, plus an understanding of the types and amounts of emission sources in or around any particular area.

6. Proposed Changes

Although EPA is proposing to retain the current 8-hour and 1-hour CO NAAQS, as discussed above in section II, the Agency is proposing to revise the requirements for the ambient CO monitoring network to include a minimum set of monitors to collect data for comparison to the NAAQS in near-roadway locations where CO emissions associated with mobile source related activity lead to increased ambient concentrations. The current network of CO monitors, beyond those at NCore sites, consists of monitors that were established to meet the 1979 monitoring rule requirements or which were placed by State and local air monitoring agencies to meet their own needs or objectives. These additional monitors in the current network are being operated without being required under EPA monitoring network regulations and as a result, they do not reflect a national monitoring network design. In CASAC comments on the second draft REA, the CASAC panel, aware of the current CO monitoring network configuration, commented on the need to reconsider CO monitoring network designs, stating that " * * * the approach for siting [CO] monitors needs greater consideration. More extensive coverage may be warranted for areas where concentrations may be more elevated, such as near roadway locations" (Brain and Samet, 2010b). Since there is a strong relationship between CO exposures and mobile source activity, as described in the ISA and REA and summarized in sections II.D.2 and IV.B.2 above, primarily in the near-road environment, EPA believes that some CO monitors should be located near on-road mobile source activity, where ambient concentrations are expected to be more elevated, as noted by CASAC.

Accordingly, EPA is proposing to require locating ambient CO monitors which would produce data for comparison to both the 8-hour and 1-hour NAAQS at a subset of near-road NO_2 monitoring stations, which are required under the Primary National Ambient Air Quality Standards for Nitrogen Dioxide; Final Rule (75 FR 6474), codified at 40 CFR part 58, appendix D. This requirement would support the objective of characterizing ambient conditions at highly trafficked near-road locations where elevated CO concentrations (relative to surrounding background concentrations) are expected to occur.

The EPA is not proposing to require dedicated CO monitoring sites to characterize area-wide concentrations representing neighborhood and larger spatial scales. Based on a recent review of the current CO monitoring network (Watkins and Thompson, 2010), EPA believes that the required NCore sites and many of the existing monitoring sites in the network provide data representative of neighborhood and larger spatial scales. These monitors are useful in providing relative background concentrations that, when compared to near-road CO monitors, could aid in the quantification of the near-road gradient of CO in a given urban area. Between the required NCore sites, and an expectation based on experience that some number of non-required area-wide sites will continue to operate in the future, we do not believe it is necessary to propose a specific area-wide monitoring requirement in this rulemaking.

EPA believes that the proposed network design which places CO monitors at a subset of near-road NO_2

[59] A natural canyon may be defined as a "deep narrow valley with steep sides" (*http://www.merriam-webster.com/dictionary/canyon*).

monitoring stations, as described in detail in the following sections, will require a relatively modest amount of new resources by State and local air agencies. Recalling that there were approximately 345 CO monitors operating in 2009, which were largely discretionary monitors not operated pursuant to Federal network design requirements, the Agency believes that a large majority of State and local air agencies could meet the proposed minimum monitoring requirements by relocating an existing CO monitor to a near-road NO_2 monitoring station. In some of these cases, the EPA believes that the relocation of a CO monitor from an existing stand-alone site to a multi-pollutant near-road NO_2 site may also result in additional operational cost savings as, in some areas, the total number of ambient monitoring sites for which operational support is needed could be reduced.

The EPA believes that the proposed requirement for placing CO monitors at some of the forthcoming near-road NO_2 monitoring stations would provide an important benefit by facilitating the implementation of a more targeted ambient CO monitoring network that provides data for comparison to the NAAQS, and is considerably smaller than the CO network currently in operation. EPA notes that under the current regulation, the current CO network is subject to a potentially significant reduction in size (as detailed in Watkins and Thompson, 2010) since non-required CO monitoring stations can be shut down upon State request, an evaluation of historical data to evaluate concentrations relative to the NAAQS (per 40 CFR 58.14), and EPA Regional Administrator approval. The occurrence of such a reduction, however, would lack the focus and direction needed to ensure retention of a network with the surveillance aspects essential to supporting the implementation of the CO NAAQS. In addition to ensuring that an effective, modestly sized network shall operate in the future, other benefits of the proposed approach of co-locating required CO monitors at required near-road NO_2 monitoring stations include: ongoing comparison of data to the NAAQS (for assessing attainment), providing data that can support health studies, providing data that can be used in verification of modeling results, and supporting the implementation of the Agency's multi-pollutant monitoring objectives.[60]

a. Monitoring for Carbon Monoxide at Required Near-Road Nitrogen Dioxide Monitoring Stations

Traffic volume on urban area roads is much greater than in the more rural areas of the country, as was noted in the preamble to the final rule to the NO_2 NAAQS (75 FR 6474). The U.S. Department of Transportation Federal Highway Administration's Status of the Nation's Highways, Bridges, and Transit: 2008 Conditions and Performance document (*http://www.fhwa.dot.gov/policy/2008cpr/es.htm#c2b*) states that "while urban mileage constitutes only 25.8 percent of total (U.S.) mileage, these roads carried 66.3 percent of the 3 trillion vehicles miles travelled (VMT) in the United States in 2006." The document also states that urban interstate highways made up only 0.8 percent of total (U.S.) mileage but carried 16.3 percent of total VMT.

The EPA notes that the 2007 American Housing Survey (*http://www.census.gov/hhes/www/housing/ahs/ahs07/ahs07.html*) estimates that over 20 million housing units are within 300 feet (~91 meters) of a 4-lane highway, airport, or railroad. Using the same survey, and considering that the average number of residential occupants in a housing unit is approximately 2.25, it is estimated that at least 45 million American citizens live near 4-lane highways, airports, or railroads. Among these three transportation facilities, roads are the most pervasive of the three, suggesting that a significant number of people may live near major roads. Furthermore, the 2008 American Time Use Survey (*http://www.bls.gov/tus/*) reported that the average U.S. civilian spent over 70 minutes traveling per day, and as recognized in section II.D.2.b, the exposure and dose assessment for this review found in-vehicle microenvironments to be those with the highest ambient CO exposures. Additionally, as described in the ISA, PA and the REA, higher concentrations are reported at locations immediately near or on roadways as compared to monitors somewhat removed from the roadways (ISA, section 3.6; PA, section 2.2.1; REA, section 2.7). These locations capture ambient concentrations that contribute to ambient exposure concentrations occurring in vehicles. Accordingly, EPA believes that air pollution monitors near major roads will provide information pertaining to a significant component of ambient CO exposure for a large portion of the population that would otherwise not be available.

The EPA recognizes the information mentioned above regarding the dominant role of mobile sources in the national CO emission inventory (discussed in section IV.B.2 above), findings of the substantial near-road concentration gradient, with elevated CO concentrations in the near-road environment compared to relative background concentrations (discussed in section IV.B.3 above), and the importance of on-road mobile sources as contributors to ambient CO exposures particularly in urban areas (REA, section 2.7). We also note that (as referenced above) CASAC indicated that additional monitoring near roadways may be warranted, and further stated "the Panel found in some instances current networks underestimated carbon monoxide levels near roadways. Such underestimation is a critical issue * * *" (Brain and Samet, 2010b). In light of this information, and the fact that we generally expect the increased levels of ambient CO (and the greatest exposure to ambient CO) to occur near-roadways, EPA has determined that it is appropriate to propose requiring CO monitoring near heavily trafficked roads in urban areas.

EPA additionally notes that near-road NO_2 monitoring sites will be placed near highly trafficked roads in urban areas, where elevated CO concentrations due to on-road mobile sources are known to occur, and that CASAC has recommended that EPA establish a near-road monitoring network that would include sites with both NO_2 and CO monitors (Russell and Samet, 2010). Accordingly, the EPA is proposing to require CO monitors that will provide data for comparison to the NAAQS to operate at a subset of required near-road NO_2 monitoring stations, which are required in 40 CFR part 58, appendix D. Specifically, the EPA is proposing that CO monitors be required in any required near-road NO_2 monitoring station in a core based statistical area (CBSA) with a population of 1,000,000 or more persons. Based on 2009 U.S. Census estimates (*http://www.census.gov*) and Federal Highway Administration data (*http://www.fhwa.dot.gov/policyinformation/tables/02.cfm*) applied to near-road NO_2 network design requirements (noted above), there would be approximately 77 CO monitoring sites required within near-road NO_2 monitoring stations within 53 CBSAs (including San Juan, PR).[61]

[60] The EPA's strategy encouraging multi-pollutant monitoring is presented most recently in the *Ambient Air Monitoring Strategy for State, Local, and Tribal Air Agencies* document published December 2008 (*http://www.epa.gov/ttn/amtic/files/ambient/monitorstrat/AAMS%20for%20SLTs%20%20-%20FINAL%20Dec%202008.pdf*).

[61] The near-road NO_2 monitoring stations, which are proposed to house required CO monitors, shall

In this proposal, EPA concludes that, given the strong relationship between CO exposures and mobile source activity, placing CO monitors at near-road NO_2 monitoring sites (which will be near highly trafficked roads in urban areas) is needed to fulfill the ambient CO monitoring objectives identified in section IV.B above. While having two monitors within CBSAs of 500,000 or more persons was the historical monitoring requirement (discussed in detail in Watkins and Thompson, 2010), with declining ambient levels we believe there is less likelihood for high CO concentrations in relatively smaller (in population) CBSAs. Accordingly, we believe that proposing to require CO monitoring only in near-road NO_2 monitoring stations in CBSAs of 1,000,000 or more persons is a reasonable approach that results in a sufficient number of CO monitors near highly trafficked roads in urban areas to provide data for supporting the NAAQS, for use in health studies, for model validation, and to support multi-pollutant monitoring objectives. The EPA solicits comment upon the proposed requirement to require CO monitors to operate within a subset of required near-road NO_2 monitoring stations, specifically those in CBSAs with 1,000,000 or more persons. The EPA solicits comment on using alternative population thresholds within which CO monitors might be required to operate in near-road NO_2 monitoring stations, *e.g.* CBSAs with 750,000 or 500,000 or more persons (which would require approximately 92 and 126 monitors, respectively), in light of the proposal to retain the existing CO NAAQS. Finally, the EPA also solicits comment on the merits of having any minimum near-road monitoring requirements for the CO monitoring network.

b. Regional Administrator Authority

The EPA is proposing to include a provision allowing the Regional Administrators to have the discretion to require monitoring above the minimum requirements as necessary to address situations where minimum monitoring requirements are not sufficient to meet monitoring objectives presented above in section IV.B.1. The EPA recognizes that minimum monitoring requirements may not always result in a network sufficient to fulfill one or more data needs or monitoring objectives for a particular area. An example of when an EPA Regional Administrator might require an additional monitor above the minimum requirements is to address a situation where data or other information suggest that a stationary CO source may be contributing to ground level concentrations that are approaching or exceeding the NAAQS. A second example of where an EPA Regional Administrator might require additional monitoring is in otherwise unmonitored urban downtown areas or urban street canyons (as discussed above in section IV.B.4), where data or other information suggest CO concentrations may be approaching or exceeding the NAAQS. A third example of where an EPA Regional Administrator might require additional monitoring is in unmonitored areas that are subject to high ground level CO concentrations particularly due to or enhanced by topographical and meteorological impacts, as discussed in section IV.B.5 above. In all cases, the Regional Administrator and the responsible State or local air monitoring agency should work together to design and/or maintain the most appropriate CO network to service monitoring objectives and any particular variety of data needs for an area.

c. Required Network Implementation

EPA proposes that state and, when appropriate, local air monitoring agencies provide a plan for deploying required CO monitors by July 1, 2012. We also propose that the ambient CO monitoring network be physically established no later than January 1, 2013. These dates correspond with the implementation schedule of the required near-road NO_2 sites, which are the same locations at which CO monitors have been proposed to be placed. EPA solicits comment on these proposed implementation dates.

7. Microscale Carbon Monoxide Monitor Siting Criteria

Carbon monoxide monitors that are proposed to operate at near-road NO_2 sites would likely be classified as microscale-type sites, per the general definition of microscale sites in 40 CFR part 58, appendix D, section 1.2. Such CO monitors would be paired with NO_2 monitors required to have inlet probe heights between 2 and 7 meters, and be placed within 50 meters of a target road segment. However, when the original minimum monitoring requirements for CO were introduced in the 1979 monitoring rule (44 FR 27571), the siting criteria codified for microscale CO sites was specifically intended to account for the installation of a near-road site in street canyon or street corridor locations. The specific siting criteria for microscale CO sites, currently located at 40 CFR part 58, appendix E, section 6.2, and listed in Table E–4 of appendix E, state that "the inlet probes for microscale carbon monoxide monitors that are being used to measure concentrations near roadways must be between 2.5 and 3.5 meters above ground level." Likewise, criteria currently located at 40 CFR part 58, appendix E, section 6.2, and listed in Table E–4 of appendix E state that microscale CO monitors are to be between 2 and 10 meters from the edge of the nearest traffic lane. These siting criteria, originally developed in 1979, were for use primarily in the urban downtown and urban street canyon environment. In that type of urban environment, such specific and relatively tight siting criteria were, and still are, appropriate since there is often little space within which ambient air monitoring inlets can be accommodated due to the typical dense configuration of buildings. However, outside of the urban downtown and urban street canyon environment, such criteria may be less applicable, considering site placement logistics and site safety for monitoring near the major highways, freeways, interstates, and major arterials that carry so much of today's urban traffic volume.

As noted above, the intent of existing microscale CO siting criteria reflects the historical intent of monitoring in urban downtown areas and urban street canyons. Since EPA is proposing that CO monitors be required to operate at a subset of near-road NO_2 sites to characterize roadway pollutant concentrations the majority of which are not anticipated to be in urban street canyons, EPA has revisited the appropriateness of the existing microscale CO siting requirement, particularly for near-road sites that exist outside of the downtown urban areas and urban street canyons. EPA consulted on this issue with the CASAC Ambient Air Monitoring and Methods Subcommittee (CASAC–AAMMS) in September, 2010. Specifically, EPA requested feedback on whether it would be appropriate to revise existing microscale CO siting criteria to match those of near-road NO_2 monitors and microscale $PM_{2.5}$ monitors. In their response to EPA, the CASAC–AAMMS recommended "that sampling criteria for CO and other monitors at sites installed to monitor [at] near-road NO_2 [sites] match those for NO_2." The CASAC–

be selected per considerations spelled out in 40 CFR part 58, Appendix D, section 4.3.2(a)(1), which prescribes site selection by ranking all road segments in a CBSA by AADT and then identifying a location or locations adjacent to those highest ranked road segments, considering fleet mix, roadway design, congestion patterns, terrain, and meteorology.

AAMMS also noted that "sampling configurations of existing microscale CO monitors should be assessed in terms of their own sampling objectives, and need not necessarily conform to those of near-road NO_2 monitors" (Russell and Samet, 2010).

Based in part on the CASAC–AAMMS comments above, EPA believes that it is appropriate to revise the existing siting criteria for microscale CO monitors to encompass both the current criteria, which are still appropriate when monitoring in the urban downtown and/or urban street canyon environment, as well as the criteria for near-road NO_2 sites. Therefore, EPA is proposing that microscale CO siting criteria for probe height and horizontal spacing be changed to match those of near-road NO_2 sites as prescribed in 40 CFR part 58 appendix E, sections 2, 4(d), 6.4(a), and Table E–4. Specifically, EPA proposes to allow microscale CO monitor inlet probes to be between 2 and 7 meters above the ground; that CO monitor inlet probes be placed so they have an unobstructed air flow, where no obstacles exist at or above the height of the monitor probe, between the monitor probe and the outside nearest edge of the traffic lanes of the target road segment; and that the CO monitor inlet probe shall be as near as practicable to the outside nearest edge of the traffic lanes of the target road segment, but shall not be located at a distance greater than 50 meters in the horizontal from the outside nearest edge of the traffic lanes of the target road segment.

These proposed siting criteria encompass, or bracket, the current allowable vertical and horizontal spacing criteria for microscale CO sites, which will allow current microscale CO sites to continue to meet siting criteria. EPA believes the proposed revision to the microscale CO siting criteria presented above will allow States to meet siting criteria while co-locating required microscale CO monitors with required near-road NO_2 monitors near heavily trafficked roads outside of urban downtown areas and urban street canyons. EPA solicits comment upon the revised CO siting requirements proposed above. The Agency also solicits comment upon whether it should create two distinct sets of siting criteria for microscale CO monitoring. One set of siting criteria would be those proposed above, while the second set would be the current siting criteria, but directed specifically to apply to existing or new microscale CO monitoring sites located in downtown urban areas and urban street canyons.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it was deemed to "raise novel legal or policy issues." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document prepared by EPA for these revisions to part 58 has been assigned EPA ICR number 0940.23.

The information collected under 40 CFR part 53 (*e.g.,* test results, monitoring records, instruction manual, and other associated information) is needed to determine whether a candidate method intended for use in determining attainment of the National Ambient Air Quality Standards (NAAQS) in 40 CFR part 50 will meet comparability requirements for designation as a Federal reference method (FRM) or Federal equivalent method (FEM). We do not expect the number of FRM or FEM determinations to increase over the number that is currently used to estimate burden associated with CO FRM/FEM determinations provided in the current ICR for 40 CFR part 53 (EPA ICR numbers 0940.23). As such, no change in the burden estimate for 40 CFR part 53 has been made as part of this rulemaking.

The information collected and reported under 40 CFR part 58 is needed to determine compliance with the NAAQS, to characterize air quality and associated health impacts, to develop emissions control strategies, and to measure progress for the air pollution program. The amendments would revise the technical requirements for CO monitoring sites, require the relocation or siting of ambient CO air monitors, and the reporting of the collected ambient CO monitoring data to EPA's Air Quality System (AQS). The annual average reporting burden for the collection under 40 CFR part 58 (averaged over the first 3 years of this ICR) for a network of 311 CO monitors is $7,235,483. Burden is defined at 5 CFR 1320.3(b). State, local, and Tribal entities are eligible for State assistance grants provided by the Federal government under the CAA which can be used for monitors and related activities.

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. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2008–0015. Submit any comments related to the ICR to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after February 11, 2011, a comment to OMB is best assured of having its full effect if OMB receives it March 14, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small

organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, this rule proposes to retain existing national standards for allowable concentrations of CO in ambient air as required by section 109 of the CAA. *See* also *American Trucking Associations* v. *EPA.* 175 F. 3d at 1044–45 (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities). Similarly, the proposed amendments to 40 CFR part 58 address the requirements for States to collect information and report compliance with the NAAQS and will not impose any requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Unless otherwise prohibited by law, under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year (adjusted for inflation). Before promulgating an EPA rule for which a written statement is required under section 202, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year (adjusted for inflation). This rule proposes to retain existing national ambient air quality standards for carbon monoxide. The expected costs associated with the monitoring requirements are described in EPA's ICR document, but those costs are expected to be well less than $100 million (adjusted for inflation) in the aggregate for any year. Furthermore, as indicated previously, in setting a NAAQS, EPA cannot consider the economic or technological feasibility of attaining ambient air quality standards.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it imposes no enforceable duty on any small governments. Therefore, this rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

This action 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. The rule does not alter the relationship between the Federal government and the States regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Under section 109 of the CAA, EPA is mandated to establish and review NAAQS; however, CAA section 116 preserves the rights of States to establish more stringent requirements if deemed necessary by a State. Furthermore, this proposed rule does not impact CAA section 107 which establishes that the States have primary responsibility for implementation of the NAAQS. Finally, as noted in section D (above) on UMRA, this rule does not impose significant costs on State, local, or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

However, as also noted in section D (above) on UMRA, EPA recognizes that States will have a substantial interest in this rule, including the proposed air quality surveillance requirements of 40 CFR part 58. Therefore, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have a substantial direct effect on one or more Indian Tribes, since Tribes are not obligated to adopt or implement any NAAQS. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are described in sections II.C and II.D.2.b.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposures to CO.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not a "significant energy action" as defined in Executive Order 13211, (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule concerns the review of the NAAQS for CO. The rule does not prescribe specific pollution control strategies by which these ambient standards will be met. Such strategies are developed by States on a case-by-case basis, and EPA cannot predict whether the control options selected by States will include

regulations on energy suppliers, distributors, or users.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards with regard to ambient monitoring of CO. We have not identified any potentially applicable voluntary consensus standards that would adequately characterize ambient CO concentrations for the purposes of determining compliance with the CO NAAQS and none have been brought to our attention.

EPA welcomes comments on this aspect of the proposed rule, and specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in the regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The action proposed in this notice is to retain without revision the existing NAAQS for CO. Therefore this action will not cause increases in source emissions or air concentrations.

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List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 53

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

40 CFR Part 58

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

Dated: January 28, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

1. The authority citation for part 50 continues to read as follows:

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

2. Appendix C to Part 50 is revised to read as follows:

Appendix C to Part 50—Measurement Principle and Calibration Procedure for the Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry)

1.0 Applicability

1.1 This non-dispersive infrared photometry (NDIR) Federal Reference Method (FRM) provides measurements of the concentration of carbon monoxide (CO) in ambient air for determining compliance with the primary and secondary National Ambient Air Quality Standards (NAAQS) for CO as specified in § 50.8 of this chapter. The method is applicable to continuous sampling and measurement of ambient CO concentrations suitable for determining 1-hour or longer average measurements. The method may also provide measurements of shorter averaging times, subject to specific analyzer performance limitations. Additional CO

monitoring quality assurance procedures and guidance are provided in part 58, appendix A, of this chapter and in reference 1 of this appendix C.

2.0 Measurement Principle

2.1 Measurements of CO in ambient air are based on automated measurement of the absorption of infrared radiation by CO in an ambient air sample drawn into an analyzer employing non-wavelength-dispersive, infrared photometry (NDIR method). Infrared energy from a source in the photometer is passed through a cell containing the air sample to be analyzed, and the quantitative absorption of energy by CO in the sample cell is measured by a suitable detector. The photometer is sensitized specifically to CO by employing CO gas in a filter cell in the optical path, which, when compared to a differential optical path without a CO filter cell, limits the measured absorption to one or more of the characteristic wavelengths at which CO strongly absorbs. However, to meet measurement performance requirements, various optical filters, reference cells, rotating gas filter cells, dual-beam configurations, moisture traps, or other means may also be used to further enhance sensitivity and stability of the photometer and to minimize potential measurement interference from water vapor, carbon dioxide (CO_2), or other species. Also, various schemes may be used to provide a suitable zero reference for the photometer, and optional automatic compensation may be provided for the actual pressure and temperature of the air sample in the measurement cell. The measured infrared absorption, converted to a digital reading or an electrical output signal, indicates the measured CO concentration.

2.2 The measurement system is calibrated by referencing the analyzer's CO measurements to CO concentration standards traceable to a National Institute of Standards and Technology (NIST) primary standard for CO, as described in the associated calibration procedure specified in section 4 of this reference method.

2.3 An analyzer implementing this measurement principle will be considered a reference method only if it has been designated as a reference method in accordance with part 53 of this chapter.

2.4 Sampling *considerations.* The use of a particle filter in the sample inlet line of a CO FRM analyzer is optional and left to the discretion of the user unless such a filter is specified or recommended by the analyzer manufacturer in the analyzer's associated operation or instruction manual.

3.0 Interferences

3.1 The NDIR measurement principle is potentially susceptible to interference from water vapor and CO_2, which have some infrared absorption at wavelengths in common with CO and normally exist in the atmosphere. Various instrumental techniques can be used to effectively minimize these interferences.

4.0 Calibration Procedures

4.1 *Principle.* Either of two methods may be selected for dynamic multipoint calibration of FRM CO analyzers, using test gases of accurately known CO concentrations obtained from one or more compressed gas cylinders certified as CO transfer standards:

4.1.1 Dilution *method:* A single certified standard cylinder of CO is quantitatively diluted as necessary with zero air to obtain the various calibration concentration standards needed.

4.1.2 Multiple-*cylinder method:* Multiple, individually certified standard cylinders of CO are used for each of the various calibration concentration standards needed.

4.1.3 Additional information on calibration may be found in Section 12 of reference 1.

4.2 Apparatus. The major components and typical configurations of the calibration systems for the two calibration methods are shown in Figures 1 and 2. Either system may be made up using common laboratory components, or it may be a commercially manufactured system. In either case, the principal components are as follows:

4.2.1 CO standard gas flow control and measurement devices (or a combined device) capable of regulating and maintaining the standard gas flow rate constant to within ± 2 percent and measuring the gas flow rate accurate to within ± 2 percent, properly calibrated to a NIST-traceable standard.

4.2.2 For the dilution method (Figure 1), dilution air flow control and measurement devices (or a combined device) capable of regulating and maintaining the air flow rate constant to within ± 2 percent and measuring the air flow rate accurate to within ± 2 percent, properly calibrated to a NIST-traceable standard.

4.2.3 Standard gas pressure regulator(s) for the standard CO cylinder(s), suitable for use with a high-pressure CO gas cylinder and having a non-reactive diaphragm and internal parts and a suitable delivery pressure.

4.2.4 Mixing chamber for the dilution method, of an inert material and of proper design to provide thorough mixing of CO standard gas and diluent air streams.

4.2.5 Output sampling manifold, constructed of an inert material and of sufficient diameter to ensure an insignificant pressure drop at the analyzer connection. The system must have a vent designed to ensure nearly atmospheric pressure at the analyzer connection port and to prevent ambient air from entering the manifold.

4.3 Reagents.

4.3.1 CO gas concentration transfer standard(s) of CO in air, containing an appropriate concentration of CO suitable for the selected operating range of the analyzer under calibration and traceable to a NIST standard reference material (SRM). If the CO analyzer has significant sensitivity to CO_2, the CO standard(s) should also contain 350 to 400 ppm CO_2 to replicate the typical CO_2 concentration in ambient air. However, if the zero air dilution ratio used for the dilution method is not less than 100:1 and the zero air contains ambient levels of CO_2, then the CO standard may be contained in nitrogen and need not contain CO_2.

4.3.2 For the dilution method, clean zero air, free of contaminants that could cause a detectable response on or a change in sensitivity of the CO analyzer. The zero air should contain < 0.1 ppm CO.

4.4 Procedure *Using the Dilution Method.*

4.4.1 Assemble or obtain a suitable dynamic dilution calibration system such as the one shown schematically in Figure 1. Generally, all calibration gases including zero air must be introduced into the sample inlet of the analyzer. However, if the analyzer has special, approved zero and span inlets and automatic valves to specifically allow introduction of calibration standards at near atmospheric pressure, such inlets may be used for calibration in lieu of the sample inlet. For specific operating instructions, refer to the manufacturer's manual.

4.4.2 Ensure that there are no leaks in the calibration system and that all flowmeters are properly and accurately calibrated, under the conditions of use, if appropriate, against a reliable volume or flow rate standard such as a soap-bubble meter or wet-test meter traceable to a NIST standard. All volumetric flow rates should be corrected to the same temperature and pressure such as 298.15 K (25 °C) and 760 mm Hg (101 kPa), using a correction formula such as the following:

$$F_c = F_m \frac{298.15 P_m}{760(T_m + 273.15)} \quad (1)$$

Where:

F_c = corrected flow rate (L/min at 25 °C and 760 mm Hg),
F_m = measured flow rate (at temperature T_m and pressure P_m),
P_m = measured pressure in mm Hg (absolute), and
T_m = measured temperature in degrees Celsius.

4.4.3 Select the operating range of the CO analyzer to be calibrated.

4.4.4 Connect the inlet of the CO analyzer to the output-sampling manifold of the calibration system.

4.4.5 Adjust the calibration system to deliver zero air to the output manifold. The total air flow must exceed the total demand of the analyzer(s) connected to the output manifold to ensure that no ambient air is pulled into the manifold vent. Allow the analyzer to sample zero air until a stable response is obtained. After the response has stabilized, adjust the analyzer zero reading.

4.4.6 Adjust the zero air flow rate and the CO gas flow rate from the standard CO cylinder to provide a diluted CO concentration of approximately 80 percent of the measurement upper range limit (URL) of the operating range of the analyzer. The total air flow rate must exceed the total demand of the analyzer(s) connected to the output manifold to ensure that no ambient air is pulled into the manifold vent. The exact CO concentration is calculated from:

$$[CO]_{OUT} = \frac{[CO]_{STD} \times F_{CO}}{F_D + F_{CO}} \quad (2)$$

Where:

$[CO]_{OUT}$ = diluted CO concentration at the output manifold (ppm),
$[CO]_{STD}$ = concentration of the undiluted CO standard (ppm),
F_{CO} = flow rate of the CO standard (L/min), and
F_D = flow rate of the dilution air (L/min).

Sample this CO concentration until a stable response is obtained. Adjust the analyzer span control to obtain the desired analyzer response reading equivalent to the calculated standard concentration. If substantial adjustment of the analyzer span control is required, it may be necessary to recheck the zero and span adjustments by repeating steps 4.4.5 and 4.4.6. Record the CO concentration and the analyzer's final response.

4.4.7 Generate several additional concentrations (at least three evenly spaced points across the remaining scale are suggested to verify linearity) by decreasing F_{CO} or increasing F_D. Be sure the total flow exceeds the analyzer's total flow demand. For each concentration generated, calculate the exact CO concentration using equation (2). Record the concentration and the analyzer's stable response for each concentration. Plot the analyzer responses (vertical or y-axis) versus the corresponding CO concentrations (horizontal or x-axis). Calculate the linear regression slope and intercept of the calibration curve and verify that no point deviates from this line by more than 2 percent of the highest concentration tested.

4.5 Procedure *Using the Multiple-Cylinder Method.* Use the procedure for the dilution method with the following changes:

4.5.1 Use a multi-cylinder, dynamic calibration system such as the typical one shown in Figure 2.

4.5.2 The flowmeter need not be accurately calibrated, provided the flow in the output manifold can be verified to exceed the analyzer's flow demand.

4.5.3 The various CO calibration concentrations required in Steps 4.4.5, 4.4.6, and 4.4.7 are obtained without dilution by selecting zero air or the appropriate certified standard cylinder.

4.6 Frequency *of Calibration.* The frequency of calibration, as well as the number of points necessary to establish the calibration curve and the frequency of other performance checking, will vary by analyzer. However, the minimum frequency, acceptance criteria, and subsequent actions are specified in reference 1, appendix D, "Measurement Quality Objectives and Validation Template for CO" (page 5 of 30). The user's quality control program should provide guidelines for initial establishment of these variables and for subsequent alteration as operational experience is accumulated. Manufacturers of CO analyzers should include in their instruction/operation manuals information and guidance as to these variables and on other matters of operation, calibration, routine maintenance, and quality control.

5.0 Reference

1. *QA Handbook for Air Pollution Measurement Systems—Volume II. Ambient Air Quality Monitoring Program.* U.S. EPA. EPA–454/B–08–003 (2008).

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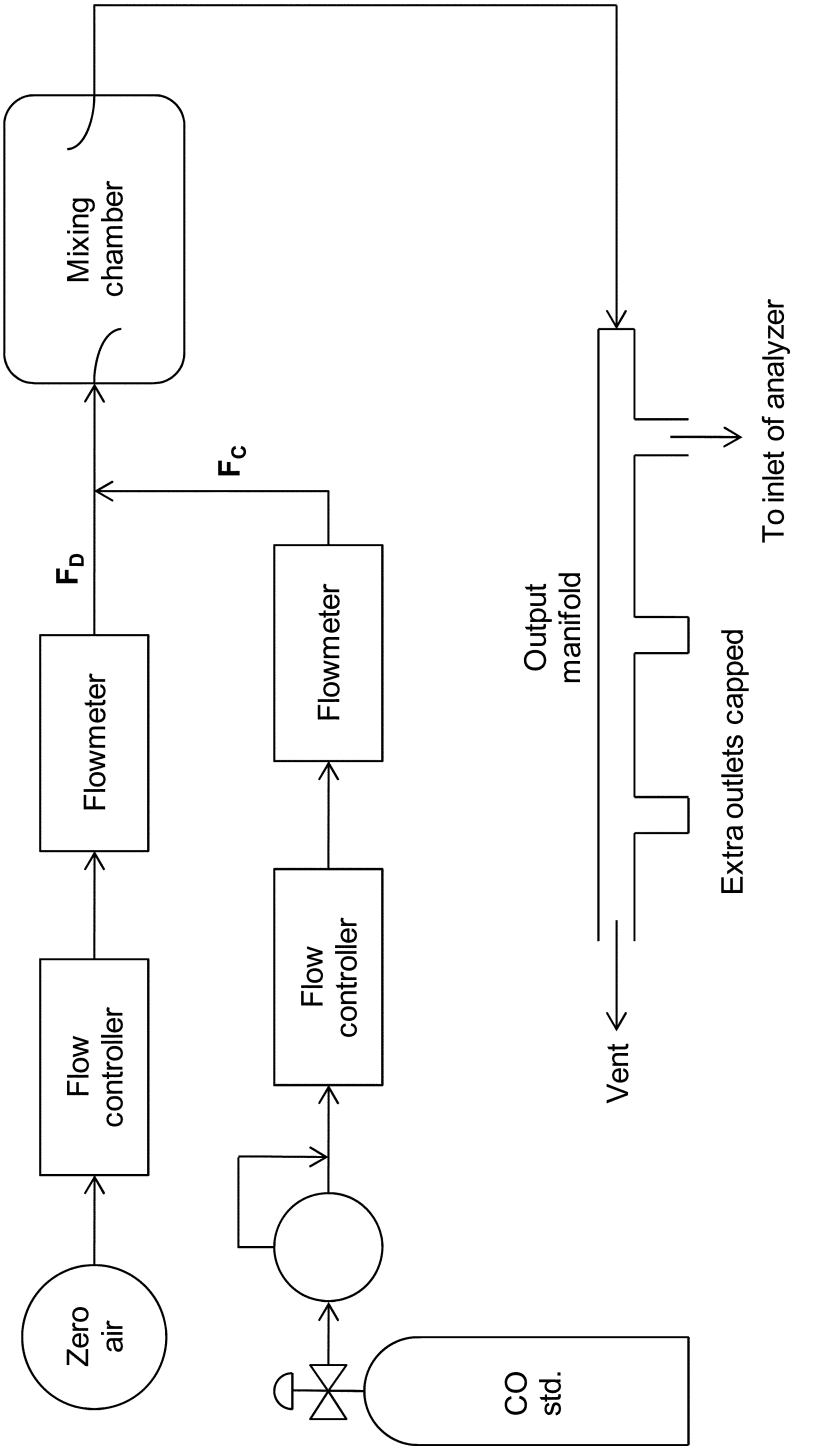


Figure 1. Dilution method for calibration of CO analyzers.

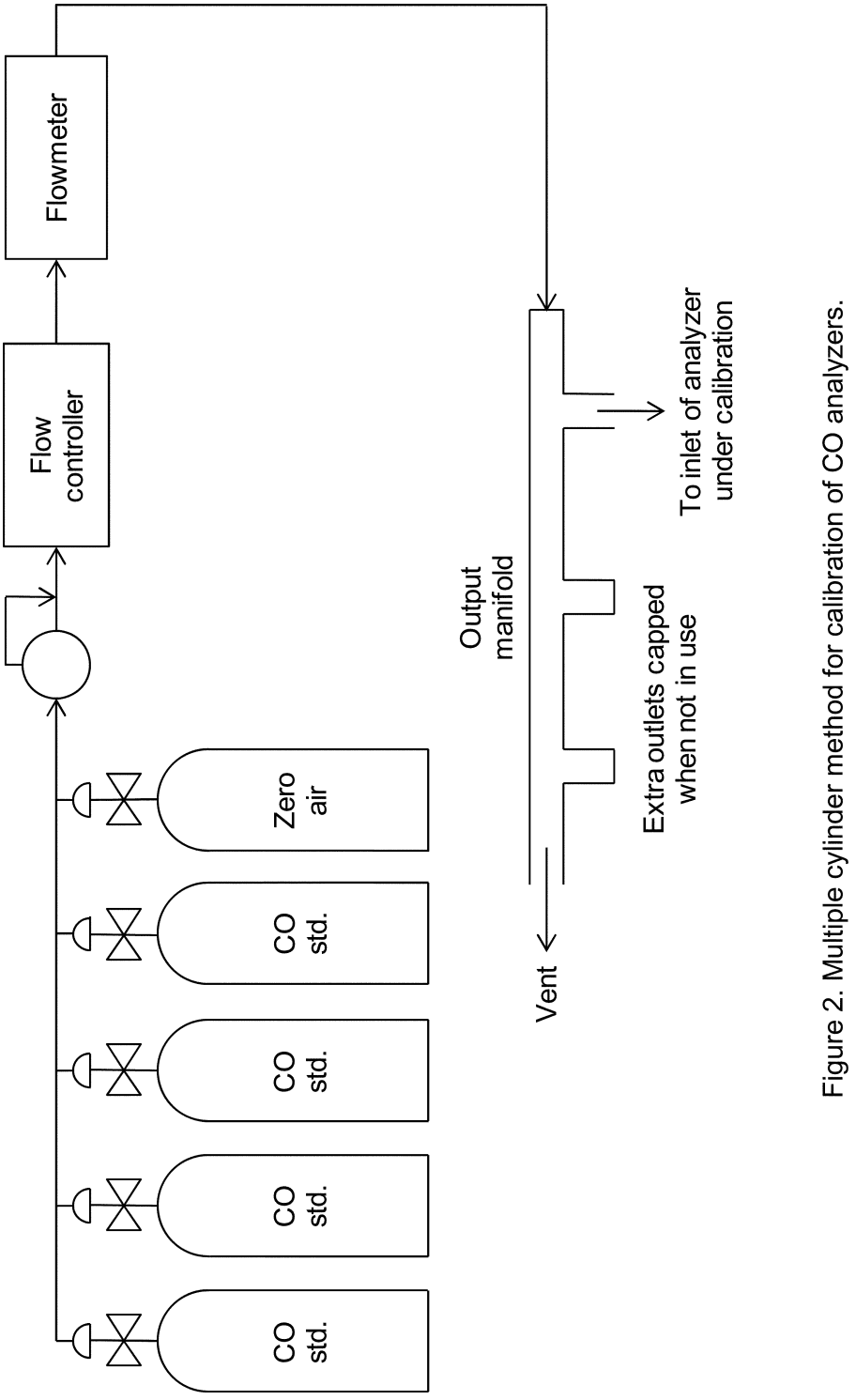


Figure 2. Multiple cylinder method for calibration of CO analyzers.

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PART 53—AMBIENT AIR QUALITY REFERENCE AND EQUIVALENT METHODS

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

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

4. Subpart B of Part 53 is revised to read as follows:

Subpart B—Procedures for Testing Performance Characteristics of Automated Methods for SO_2, CO, O_3, and NO_2

Sec.

53.20 General provisions.
53.21 Test conditions.
53.22 Generation of test atmospheres.
53.23 Test procedure.
Appendix A to Subpart B—Optional Forms for Reporting Test Results

Subpart B—Procedures for Testing Performance Characteristics of Automated Methods for SO_2, CO, O_3, and NO_2

§ 53.20 General provisions.

(a) The test procedures given in this subpart shall be used to test the performance of candidate automated methods against the performance requirement specifications given in

table B–1. A test analyzer representative of the candidate automated method must exhibit performance better than, or not outside, the specified limit or limits for each such performance parameter specified (except range) to satisfy the requirements of this subpart. Except as provided in paragraph (b) of this section, the measurement range of the candidate method must be the standard range specified in table B–1 to satisfy the requirements of this subpart.

(b) *Measurement ranges.* For a candidate method having more than one selectable measurement range, one range must be the standard range specified in table B–1, and a test analyzer representative of the method must pass the tests required by this subpart while operated in that range.

(1) *Higher ranges.* The tests may be repeated for one or more higher (broader) ranges (*i.e.,* ranges extending to higher concentrations) than the standard range specified in table B–1, provided that the range does not extend to concentrations more than four times the upper range limit of the standard range specified in table B–1. For such higher ranges, only the tests for range (calibration), noise at 80% of the upper range limit, and lag, rise and fall time are required to be repeated. For the purpose of testing a higher range, the test procedure of § 53.23(e) may be abridged to include only those components needed to test lag, rise and fall time.

(2) *Lower ranges.* The tests may be repeated for one or more lower (narrower) ranges (*i.e.,* ones extending to lower concentrations) than the standard range specified in table B–1. For methods for some pollutants, table B–1 specifies special performance limit requirements for lower ranges. If special low-range performance limit requirements are not specified in table B–1, then the performance limit requirements for the standard range apply. For lower ranges for any method, only the tests for range (calibration), noise at 0% of the measurement range, lower detectable limit, (and nitric oxide interference for SO_2 UVF methods) are required to be repeated, provided the tests for the standard range shows the applicable limit specifications are met for the other test parameters.

(3) If the tests are conducted and passed only for the specified standard range, any FRM or FEM determination with respect to the method will be limited to that range. If the tests are passed for both the specified range and one or more higher or lower ranges, any such determination will include the additional higher or lower range(s) as well as the specified standard range. Appropriate test data shall be submitted for each range sought to be included in a FRM or FEM method determination under this paragraph (b).

(c) For each performance parameter (except range), the test procedure shall be initially repeated seven (7) times to yield 7 test results. Each result shall be compared with the corresponding performance limit specification in table B–1; a value higher than or outside the specified limit or limits constitutes a failure. These 7 results for each parameter shall be interpreted as follows:

(1) Zero (0) failures: The candidate method passes the test for the performance parameter.

(2) Three (3) or more failures: The candidate method fails the test for the performance parameter.

(3) One (1) or two (2) failures: Repeat the test procedures for the performance parameter eight (8) additional times yielding a total of fifteen (15) test results. The combined total of 15 test results shall then be interpreted as follows:

(i) One (1) or two (2) failures: The candidate method passes the test for the performance parameter.

(ii) Three (3) or more failures: The candidate method fails the test for the performance parameter.

(d) The tests for *zero drift, span drift, lag time, rise time, fall time,* and *precision* shall be carried out in a single integrated procedure conducted at various line voltages and ambient temperatures specified in § 53.23(e). A temperature-controlled environmental test chamber large enough to contain the test analyzer is recommended for this test. The tests for *noise, lower detectable limit,* and *interference equivalent* shall be conducted at any ambient temperature between 20 °C and 30 °C, at any normal line voltage between 105 and 125 volts, and shall be conducted such that not more than three (3) test results for each parameter are obtained in any 24-hour period.

(e) If necessary, all measurement response readings to be recorded shall be converted to concentration units or adjusted according to the calibration curve constructed in accordance with § 53.21(b).

(f) All recorder chart tracings (or equivalent data plots), records, test data and other documentation obtained from or pertinent to these tests shall be identified, dated, signed by the analyst performing the test, and submitted.

Note to § 53.20: Suggested formats for reporting the test results and calculations are provided in Figures B–2, B–3, B–4, B–5, and B–6 in appendix A to this subpart. Symbols and abbreviations used in this subpart are listed in table B–5 of appendix A to this subpart.

TABLE B–1—PERFORMANCE LIMIT SPECIFICATIONS FOR AUTOMATED METHODS

Performance parameter	Units [1]	SO_2		O_3 (Std. range)	CO		NO_2 (Std. range)	Definitions and test procedures
		Std. range [3]	Lower range [2 3]		Std. range [3]	Lower range [2 3]		
1. Range	ppm	0–0.5	< 0.5	0–0.5	0–50	< 50	0–0.5	Sec. 53.23(a).
2. Noise	ppm	0.001	0.0005	0.005	0.2	0.1	0.005	Sec. 53.23(b).
3. Lower detectable limit	ppm	0.002	0.001	0.010	0.4	0.2	0.010	Sec. 53.23(c).
4. Interference equivalent:								
Each interferent	ppm	± 0.005	[4] ± 0.005	± 0.02	± 1.0	± 0.5	± 0.02	Sec. 53.23(d).
Total, all interferents	ppm	.....	.....	0.06	.....	.....	0.04	Sec. 53.23(d).
5. Zero drift, 12 and 24 hour	ppm	± 0.004	± 0.002	± 0.02	± 0.5	± 0.3	± 0.02	Sec. 53.23(e).
6. Span drift, 24 hour:								
20% of upper range limit	Percent	.....	± 3.0	± 20.0	.....	± 2.0	± 20.0	Sec. 53.23(e).
80% of upper range limit	Percent	± 3.0	.....	± 5.0	± 2.0	.....	± 5.0	Sec. 53.23(e).
7. Lag time	Minutes	2	2	20	2.0	2.0	20	Sec. 53.23(e).
8. Rise time	Minutes	2	2	15	2.0	2.0	15	Sec. 53.23(e).
9. Fall time	Minutes	2	2	15	2.0	2.0	15	Sec. 53.23(e).
10. Precision:								
20% of upper range limit	ppm	.....	.....	0.010	.....	.....	0.020	Sec. 53.23(e).
	Percent	2	2	.....	1.0	1.0	.....	Sec. 53.23(e).

TABLE B–1—PERFORMANCE LIMIT SPECIFICATIONS FOR AUTOMATED METHODS—Continued

Performance parameter	Units [1]	SO_2		O_3 (Std. range)	CO		NO_2 (Std. range)	Definitions and test procedures
		Std. range [3]	Lower range [2 3]		Std. range [3]	Lower range [2 3]		
80% of upper range limit	ppm Percent	2	2	0.010	1.0	1.0	0.030	Sec. 53.23(e). Sec. 53.23(e).

[1] To convert from parts per million (ppm) to $\mu g/m^3$ at 25 °C and 760 mm Hg, multiply by M/0.02447, where M is the molecular weight of the gas. Percent means percent of the upper measurement range limit.

[2] Tests for interference equivalent and lag time do not need to be repeated for any lower range provided the test for the standard range shows that the lower range specification (if applicable) is met for each of these test parameters.

[3] For candidate analyzers having automatic or adaptive time constants or smoothing filters, describe their functional nature, and describe and conduct suitable tests to demonstrate their function aspects and verify that performances for calibration, noise, lag, rise, fall times, and precision are within specifications under all applicable conditions. For candidate analyzers with operator-selectable time constants or smoothing filters, conduct calibration, noise, lag, rise, fall times, and precision tests at the highest and lowest settings that are to be included in the FRM or FEM designation.

[4] For nitric oxide interference for the SO_2 UVF method, interference equivalent is $\pm$ 0.0003 ppm for the lower range.

§ 53.21 Test conditions.

(a) *Set-up and start-up* of the test analyzer shall be in strict accordance with the operating instructions specified in the manual referred to in § 53.4(b)(3). Allow adequate warm-up or stabilization time as indicated in the operating instructions before beginning the tests. The test procedures assume that the test analyzer has a conventional analog measurement signal output that is connected to a suitable strip chart recorder of the servo, null-balance type. This recorder shall have a chart width of a least 25 centimeters, chart speeds up to 10 cm per hour, a response time of 1 second or less, a deadband of not more than 0.25 percent of full scale, and capability either of reading measurements at least 5 percent below zero or of offsetting the zero by at least 5 percent. If the test analyzer does not have an analog signal output, or if a digital or other type of measurement data output is used for the tests, an alternative measurement data recording device (or devices) may be used for recording the test data, provided that the device is reasonably suited to the nature and purposes of the tests, and an analog representation of the analyzer measurements for each test can be plotted or otherwise generated that is reasonably similar to the analog measurement recordings that would be produced by a conventional chart recorder connected to a conventional analog signal output.

(b) *Calibration* of the test analyzer shall be carried out prior to conducting the tests described in this subpart. The calibration shall be as indicated in the manual referred to in § 53.4(b)(3) and as follows: If the chart recorder or alternative data recorder does not have below zero capability, adjust either the controls of the test analyzer or the chart or data recorder to obtain a + 5% offset zero reading on the recorder chart to facilitate observing negative response or drift. If the candidate method is not capable of negative response, the test analyzer (not the data recorder) shall be operated with a similar offset zero. Construct and submit a calibration curve showing a plot of recorder scale readings or other measurement output readings (vertical or y-axis) against pollutant concentrations presented to the analyzer for measurement (horizontal or x-axis). If applicable, a plot of base analog output units (volts, millivolts, milliamps, *etc.*) against pollutant concentrations shall also be obtained and submitted. All such calibration plots shall consist of at least seven (7) approximately equally spaced, identifiable points, including 0 and 90 $\pm$ 5 percent of the upper range limit (URL).

(c) Once the test analyzer has been set up and calibrated and the tests started, manual adjustment or normal periodic maintenance is permitted only every 3 days. Automatic adjustments which the test analyzer performs by itself are permitted at any time. The submitted records shall show clearly when any manual adjustment or periodic maintenance was made during the tests and describe the specific operations performed.

(d) If the test analyzer should malfunction during any of the performance tests, the tests for that parameter shall be repeated. A detailed explanation of the malfunction, remedial action taken, and whether recalibration was necessary (along with all pertinent records and charts) shall be submitted. If more than one malfunction occurs, all performance test procedures for all parameters shall be repeated.

(e) Tests for all performance parameters shall be completed on the same test analyzer; however, use of multiple test analyzers to accelerate testing is permissible for testing additional ranges of a multi-range candidate method.

§ 53.22 Generation of test atmospheres.

(a) Table B–2 specifies preferred methods for generating test atmospheres and suggested methods of verifying their concentrations. Only one means of establishing the concentration of a test atmosphere is normally required, provided that that means is adequately accurate and credible. If the method of generation can produce accurate, reproducible concentrations, verification is optional. If the method of generation is not reproducible or reasonably quantifiable, then establishment of the concentration by some credible verification method is required.

(b) The test atmosphere delivery system shall be designed and constructed so as not to significantly alter the test atmosphere composition or concentration during the period of the test. The system shall be vented to insure that test atmospheres are presented to the test analyzer at very nearly atmospheric pressure. The delivery system shall be fabricated from borosilicate glass, FEP Teflon, or other material that is inert with regard to the gas or gases to be used.

(c) The output of the test atmosphere generation system shall be sufficiently stable to obtain stable response readings from the test analyzer during the required tests. If a permeation device is used for generation of a test atmosphere, the device, as well as the air passing over it, shall be controlled to 0.1 °C.

(d) All diluent air shall be zero air free of contaminants likely to react with the test atmospheres or cause a detectable response on the test analyzer.

(e) The concentration of each test atmosphere used shall be quantitatively established and/or verified before or during each series of tests. Samples for verifying test concentrations shall be

collected from the test atmosphere delivery system as close as feasible to the sample intake port of the test analyzer.

(f) The accuracy of all flow measurements used to calculate test atmosphere concentrations shall be documented and referenced to a primary flow rate or volume standard (such as a spirometer, bubble meter, *etc.*). Any corrections shall be clearly shown. All flow measurements given in volume units shall be standardized to 25 °C. and 760 mm Hg.

(g) Schematic drawings, photos, descriptions, and other information showing complete procedural details of the test atmosphere generation, verification, and delivery system shall be provided. All pertinent calculations shall be clearly indicated.

TABLE B–2—TEST ATMOSPHERES

Test gas	Generation	Verification
Ammonia	Permeation device. Similar to system described in references 1 and 2.	Indophenol method, reference 3.
Carbon dioxide	Cylinder of zero air or nitrogen containing CO_2 as required to obtain the concentration specified in table B–3.	Use NIST-certified standards whenever possible. If NIST standards are not available, obtain 2 standards from independent sources which agree within 2 percent, or obtain one standard and submit it to an independent laboratory for analysis, which must agree within 2 percent of the supplier's nominal analysis.
Carbon monoxide	Cylinder of zero air or nitrogen containing CO as required to obtain the concentration specified in table B–3.	Use an FRM CO analyzer as described in reference 8.
Ethane	Cylinder of zero air or nitrogen containing ethane as required to obtain the concentration specified in table B–3.	Gas chromatography, ASTM D2820, reference 10. Use NIST-traceable gaseous methane or propane standards for calibration.
Ethylene	Cylinder of pre-purified nitrogen containing ethylene as required to obtain the concentration specified in table B–3.	Do.
Hydrogen chloride	Cylinder [1] of pre-purified nitrogen containing approximately 100 ppm of gaseous HCl. Dilute with zero air to concentration specified in table B–3.	Collect samples in bubbler containing distilled water and analyze by the mercuric thiocyanate method, ASTM (D612), p. 29, reference 4.
Hydrogen sulfide	Permeation device system described in references 1 and 2	Tentative method of analysis for H_2S content of the atmosphere, p. 426, reference 5.
Methane	Cylinder of zero air containing methane as required to obtain the concentration specified in table B–3.	Gas chromatography ASTM D2820, reference 10. Use NIST-traceable methane standards for calibration.
Nitric oxide	Cylinder [1] of pre-purified nitrogen containing approximately 100 ppm NO. Dilute with zero air to required concentration.	Gas phase titration as described in reference 6, section 7.1.
Nitrogen dioxide	1. Gas phase titration as described in reference 6	1. Use an FRM NO_2 analyzer calibrated with a gravimetrically calibrated permeation device.
	2. Permeation device, similar to system described in reference 6.	2. Use an FRM NO_2 analyzer calibrated by gas-phase titration as described in reference 6.
Ozone	Calibrated ozone generator as described in reference 9	Use an FEM ozone analyzer calibrated as described in reference 9.
Sulfur dioxide	1. Permeation device as described in references 1 and 2	Use an SO_2 FRM or FEM analyzer as described in reference 7.
	2. Dynamic dilution of a cylinder containing approximately 100 ppm SO_2 as described in Reference 7.	
Water	Pass zero air through distilled water at a fixed known temperature between 20° and 30° C such that the air stream becomes saturated. Dilute with zero air to concentration specified in table B–3.	Measure relative humidity by means of a dew-point indicator, calibrated electrolytic or piezo electric hygrometer, or wet/dry bulb thermometer.
Xylene	Cylinder of pre-purified nitrogen containing 100 ppm xylene. Dilute with zero air to concentration specified in table B–3.	Use NIST-certified standards whenever possible. If NIST standards are not available, obtain 2 standards from independent sources which agree within 2 percent, or obtain one standard and submit it to an independent laboratory for analysis, which must agree within 2 percent of the supplier's nominal analysis.
Zero air	1. Ambient air purified by appropriate scrubbers or other devices such that it is free of contaminants likely to cause a detectable response on the analyzer.	
	2. Cylinder of compressed zero air certified by the supplier or an independent laboratory to be free of contaminants likely to cause a detectable response on the analyzer.	

[1] Use stainless steel pressure regulator dedicated to the pollutant measured.

Reference 1. O'Keefe, A. E., and Ortaman, G. C. "Primary Standards for Trace Gas Analysis," *Anal. Chem.* 38, 760 (1966).

Reference 2. Scaringelli, F. P., A. E. Rosenberg, E*, and Bell, J. P., "Primary Standards for Trace Gas Analysis." *Anal. Chem.* 42, 871 (1970).

Reference 3. "Tentative Method of Analysis for Ammonia in the Atmosphere (Indophenol Method)", *Health Lab Sciences,* vol. 10, No. 2, 115–118, April 1973.

Reference 4. 1973 Annual Book of ASTM Standards, American Society for Testing and Materials, 1916 Race St., Philadelphia, PA.

Reference 5. *Methods for Air Sampling and Analysis,* Intersociety Committee, 1972, American Public Health Association, 1015.

Reference 6. 40 CFR 50 Appendix F, "Measurement Principle and Calibration Principle for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence)."

Reference 7. 40 CFR 50 Appendix A–1, "Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorscence)."

Reference 8. 40 CFR 50 Appendix C, "Measurement Principle and Calibration Procedure for the Measurement of Carbon Monoxide in the Atmosphere" (Non-Dispersive Infrared Photometry)".

Reference 9. 40 CFR 50 Appendix D, "Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere".
Reference 10. "Standard Test Method for C, through C5 Hydrocarbons in the Atmosphere by Gas Chromatography", D 2820, 1987 Annual Book of Aston Standards, vol 11.03, American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

§ 53.23 Test procedures.

(a) *Range*—(1) *Technical definition.* The nominal minimum and maximum concentrations that a method is capable of measuring.

Note to § 53.23(a)(1): The nominal range is given as the lower and upper range limits in concentration units, for example, 0–0.5 parts per million (ppm).

(2) *Test procedure.* Determine and submit a suitable calibration curve, as specified in § 53.21(b), showing the test analyzer's measurement response over at least 95 percent of the required or indicated measurement range.

Note to § 53.23(a)(2): A single calibration curve for each measurement range for which an FRM or FEM designation is sought will normally suffice.

(b) *Noise*—(1) *Technical definition.* Spontaneous, short duration deviations in measurements or measurement signal output, about the mean output, that are not caused by input concentration changes. Measurement noise is determined as the standard deviation of a series of measurements of a constant concentration about the mean and is expressed in concentration units.

(2) *Test procedure.* (i) Allow sufficient time for the test analyzer to warm up and stabilize. Determine measurement noise at each of two fixed concentrations, first using zero air and then a pollutant test gas concentration as indicated below. The noise limit specification in table B–1 shall apply to both of these tests.

(ii) For an analyzer with an analog signal output, connect an integrating-type digital meter (DM) suitable for the test analyzer's output and accurate to three significant digits, to determine the analyzer's measurement output signal.

Note to § 53.23(b)(2): Use of a chart recorder in addition to the DM is optional.

(iii) Measure zero air with the test analyzer for 60 minutes. During this 60-minute interval, record twenty-five (25) test analyzer concentration measurements or DM readings at 2-minute intervals. (*See* Figure B–2 in appendix A of this subpart.)

(iv) If applicable, convert each DM test reading to concentration units (ppm) or adjust the test readings (if necessary) by reference to the test analyzer's calibration curve as determined in § 53.21(b). Label and record the test measurements or converted DM readings as r_1, r_2, r_3 * * * r_i * * * r_{25}.

(v) Calculate measurement noise as the standard deviation, *S,* as follows:

$$S = \sqrt{\frac{1}{24}\left[\sum_{i=1}^{25} r_i^2 - \frac{1}{25}\left(\sum_{i=1}^{25} r_i\right)^2\right]}$$

where *i* indicates the *i*-th test measurement or DM reading in ppm.

(vi) Let *S* at 0 ppm be identified as S_0; compare S_0 to the noise limit specification given in table B–1.

(vii) Repeat steps in Paragraphs (b)(2)(iii) through (v) of this section using a pollutant test atmosphere concentration of 80 ± 5 percent of the URL instead of zero air, and let *S* at 80 percent of the URL be identified as S_{80}. Compare S_{80} to the noise limit specification given in table B–1 of this subpart.

(viii) Both S_0 and S_{80} must be less than or equal to the table B–1 noise limit specification to pass the test for the noise parameter.

(c) *Lower detectable limit*—(1) *Technical definition.* The minimum pollutant concentration that produces a measurement or measurement output signal of at least twice the noise level.

(2) *Test procedure.* (i) Allow sufficient time for the test analyzer to warm up and stabilize. Measure zero air and record the stable measurement reading in ppm as B_Z. (*See* Figure B–3 in appendix A of this subpart.)

(ii) Generate and measure a pollutant test concentration equal to the value for the lower detectable limit specified in table B–1.

Note to § 53.23(c)(2): If necessary, the test concentration may be generated or verified at a higher concentration, then quantitatively and accurately diluted with zero air to the final required test concentration.

(iii) Record the test analyzer's stable measurement reading, in ppm, as B_L.

(iv) Determine the lower detectable limit (*LDL*) test result as $LDL = B_L - B_Z$. Compare this *LDL* value with the noise level, S_0, determined in § 53.23(b), for the 0 concentration test atmosphere. *LDL* must be equal to or higher than $2 \times S_0$ to pass this test.

(d) Interference equivalent—(1) *Technical definition.* Positive or negative measurement response caused by a substance other than the one being measured.

(2) *Test procedure.* The test analyzer shall be tested for all substances likely to cause a detectable response. The test analyzer shall be challenged, in turn, with each potential interfering agent (interferent) specified in table B–3. In the event that there are substances likely to cause a significant interference which have not been specified in table B–3, these substances shall also be tested, in a manner similar to that for the specified interferents, at a concentration substantially higher than that likely to be found in the ambient air. The interference may be either positive or negative, depending on whether the test analyzer's measurement response is increased or decreased by the presence of the interferent. Interference equivalents shall be determined by mixing each interferent, one at a time, with the pollutant at an interferent test concentration not lower than the test concentration specified in table B–3 (or as otherwise required for unlisted interferents), and comparing the test analyzer's measurement response to the response caused by the pollutant alone. Known gas-phase reactions that might occur between a listed interferent and the pollutant are designated by footnote 3 in table B–3. In these cases, the interference equivalent shall be determined without mixing with the pollutant.

(i) Allow sufficient time for warm-up and stabilization of the test analyzer.

(ii) For a candidate method using a prefilter or scrubber device based upon a chemical reaction to derive part of its specificity and which device requires periodic service or maintenance, the test analyzer shall be "conditioned" prior to conducting each interference test series. This requirement includes conditioning for the NO_2 converter in chemiluminescence $NO/NO_2/NO_X$ analyzers and for the ozone scrubber in UV-absorption ozone analyzers. Conditioning is as follows:

(A) Service or perform the indicated maintenance on the scrubber or prefilter device, as if it were due for such maintenance, as directed in the manual referred to in § 53.4(b)(3).

(B) Before testing for each potential interferent, allow the test analyzer to sample through the prefilter or scrubber device a test atmosphere containing the interferent at a concentration not lower than the value specified in table B–3 (or, for unlisted potential interferents, at a concentration substantially higher than likely to be found in ambient air). Sampling shall be at the normal flow rate and shall be continued for 6 continuous hours prior to the interference test series. Conditioning for all applicable interferents prior to any of

the interference tests is permissible. Also permissible is simultaneous conditioning with multiple interferents, provided no interferent reactions are likely to occur in the conditioning system.

(iii) Generate three test atmosphere streams as follows:

(A) Test atmosphere *P:* Pollutant test concentration.

(B) Test atmosphere *I:* Interferent test concentration.

(C) Test atmosphere *Z:* Zero air.

(iv) Adjust the individual flow rates and the pollutant or interferent generators for the three test atmospheres as follows:

(A) The flow rates of test atmospheres *I* and *Z* shall be equal.

(B) The concentration of the pollutant in test atmosphere *P* shall be adjusted such that when *P* is mixed (diluted) with either test atmosphere *I* or *Z,* the resulting concentration of pollutant shall be as specified in table B–3.

(C) The concentration of the interferent in test atmosphere *I* shall be adjusted such that when *I* is mixed (diluted) with test atmosphere *P,* the resulting concentration of interferent shall be not less than the value specified in table B–3 (or as otherwise required for unlisted potential interferents).

(D) To minimize concentration errors due to flow rate differences between *I* and *Z,* it is recommended that, when possible, the flow rate of *P* be from 10 to 20 times larger than the flow rates of *I* and *Z.*

(v) Mix test atmospheres *P* and *Z* by passing the total flow of both atmospheres through a (passive) mixing component to insure complete mixing of the gases.

(vi) Sample and measure the mixture of test atmospheres *P* and *Z* with the test analyzer. Allow for a stable measurement reading, and record the reading, in concentration units, as *R* (*see* Figure B–3).

(vii) Mix test atmospheres *P* and *I* by passing the total flow of both atmospheres through a (passive) mixing component to insure complete mixing of the gases.

(viii) Sample and measure this mixture of *P* and *I* with the test analyzer. Record the stable measurement reading, in concentration units, as R_I.

(ix) Calculate the interference equivalent (*IE*) test result as:

$$IE = R_I - R.$$

IE must be within the limits (inclusive) specified in table B–1 for each interferent tested to pass the interference equivalent test.

(x) Follow steps (iii) through (ix) of this section, in turn, to determine the interference equivalent for each listed interferent as well as for any other potential interferents identified.

(xi) For those potential interferents which cannot be mixed with the pollutant, as indicated by footnote (3) in table B–3, adjust the concentration of test atmosphere *I* to the specified value without being mixed or diluted by the pollutant test atmosphere. Determine *IE* as follows:

(A) Sample and measure test atmosphere *Z* (zero air). Allow for a stable measurement reading and record the reading, in concentration units, as *R.*

(B) Sample and measure the interferent test atmosphere *I.* If the test analyzer is not capable of negative readings, adjust the analyzer (not the recorder) to give an offset zero. Record the stable reading in concentration units as R_I, extrapolating the calibration curve, if necessary, to represent negative readings.

(C) Calculate $IE = R_I - R$. *IE* must be within the limits (inclusive) specified in table B–1 for each interferent tested to pass the interference equivalent test.

(xii) Sum the *absolute value* of all the individual interference equivalent test results. This sum must be equal to or less than the total interferent limit given in table B–1 to pass the test.

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TABLE B-3—INTERFERENT TEST CONCENTRATION,[1] PARTS PER MILLION

Pollutant	Analyzer Type [2]	Hydrochloric acid	Ammonia	Hydrogen sulfide	Sulfur dioxide	Nitrogen dioxide	Nitric oxide	Carbon dioxide	Ethylene	Ozone	M-xylene	Water vapor	Carbon monoxide	Methane	Ethane	Naphthalene
SO_2	Ultraviolet fluorescence			0.1[5]	0.14[4]	0.5	0.5			0.5	0.2	20,000				0.05[6]
SO_2	Flame photometric			0.01	0.14[4]			750				20,000[3]	50			
SO_2	Gas chromatography			0.1	0.14[4]			750				20,000[3]	50			
SO_2	Spectrophotometric-wet chemical (pararosanaline)	0.2	0.1	0.1	0.14[4]	0.5		750		0.5						
SO_2	Electrochemical	0.2	0.1	0.1	0.14[4]	0.5	0.5		0.2	0.5		20,000[3]				
SO_2	Conductivity	0.2	0.1		0.14[4]	0.5		750								
SO_2	Spectrophotometric-gas phase, including DOAS				0.14[4]	0.5				0.5	0.2					
O_3	Chemiluminescent			0.1[3]				750		0.08[4]		20,000[3]				
O_3	Electrochemical		0.1[3]		0.5	0.5				0.08[4]						
O_3	Spectrophotometric-wet chemical (potassium iodide)		0.1[3]		0.5	0.5	0.5[3]			0.08[4]						
O_3	Spectrophotometric-gas phase, including ultraviolet absorption and DOAS)				0.5	0.5	0.5			0.08[4]	0.02	20,000				
CO	Non-dispersive Infrared							750				20,000	10^4			
CO	Gas chromatography with flame ionization detector											20,000	10^4		0.5	
CO	Electrochemical						0.5		0.2			20,000	10^4			
CO	Catalytic combustion-thermal detection		0.1					750	0.2			20,000	10^4	5.0	0.5	
CO	IR fluorescence							750				20,000	10^4		0.5	
CO	Mercury replacement-UV photometric								0.2				10^4		0.5	

TABLE B-3—INTERFERANT TEST CONCENTRATION,[1] PARTS PER MILLION (CONTINUED)

Pollutant	Analyzer Type	Hydrochloric acid	Ammonia	Hydrogen sulfide	Sulfur dioxide	Nitrogen dioxide	Nitric oxide	Carbon dioxide	Ethylene	Ozone	M-xylene	Water vapor	Carbon monoxide	Methane	Ethane	Naphthalene
NO_2	Chemiluminescent		0.1[3]		0.5	0.1[4]	0.5					20,000				
NO_2	Spectrophotometric-wet chemical (azo-dye reaction)				0.5	0.1[4]	0.5	750		0.5						
NO_2	Electrochemical	0.2	0.1[3]		0.5	0.1[4]	0.5	750		0.5		20,000	50			
NO_2	Spectrophotometric-gas phase		0.1[3]		0.5	0.1[4]	0.5			0.5		20,000	50			

1. Concentrations of interferent listed must be prepared and controlled to ±10 percent of the stated value.
2. Analyzer types not listed will be considered by the Administrator as special cases.
3. Do not mix with the pollutant.
4. Concentration of pollutant used for test. These pollutant concentrations must be prepared to ±10 percent of the stated value.
5. If candidate method utilizes an elevated-temperature scrubber for removal of aromatic hydrocarbons, perform this interference test.
6. If naphthalene test concentration cannot be accurately quantified, remove the scrubber, use a test concentration that causes a full scale response, reattach the scrubber, and evaluate response for interference.

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(e) *Zero drift, span drift, lag time, rise time, fall time, and precision*—(1) *Technical definitions*—(i) *Zero drift.* The change in measurement response to

zero pollutant concentration over 12- and 24-hour periods of continuous unadjusted operation.

(ii) *Span drift.* The percent change in measurement response to an up-scale pollutant concentration over a 24-hour period of continuous unadjusted operation.

(iii) *Lag time.* The time interval between a step change in input concentration and the first observable corresponding change in measurement response.

(iv) *Rise time.* The time interval between initial measurement response and 95 percent of final response after a step increase in input concentration.

(v) *Fall time.* The time interval between initial measurement response and 95 percent of final response after a step decrease in input concentration.

(vi) *Precision.* Variation about the mean of repeated measurements of the same pollutant concentration, expressed as one standard deviation.

(2) Tests for these performance parameters shall be accomplished over a period of seven (7) or fifteen (15) test days. During this time, the line voltage supplied to the test analyzer and the ambient temperature surrounding the analyzer shall be changed from day to day, as required in paragraph(e)(4) of this section. One test result for each performance parameter shall be obtained each test day, for seven (7) or fifteen (15) test days, as determined from the test results of the first seven days. The tests for each test day are performed in a single integrated procedure.

(3) The 24-hour test day may begin at any clock hour. The first approximately 12 hours of each test day are required for testing 12-hour zero drift. Tests for the other parameters shall be conducted any time during the remaining 12 hours.

(4) Table B–4 of this section specifies the line voltage and room temperature to be used for each test day. The applicant may elect to specify a wider temperature range (minimum and maximum temperatures) than the range specified in table B–4 and to conduct these tests over that wider temperature range in lieu of the specified temperature range. If the test results show that all test parameters of this section § 53.23(e) are passed over this wider temperature range, a subsequent FRM or FEM designation for the candidate method based in part on this test shall indicate approval for operation of the method over such wider temperature range. The line voltage and temperature shall be changed to the specified values (or to the alternative, wider temperature values, if applicable) at the start of each test day (*i.e.,* at the start of the 12-hour zero test). Initial adjustments (day zero) shall be made at a line voltage of 115 volts (rms) and a room temperature of 25 °C.

(5) The tests shall be conducted in blocks consisting of 3 test days each until 7 (or 15, if necessary) test results have been obtained. (The final block may contain fewer than three test days.) Test days need not be contiguous days, but during any idle time between tests or test days, the test analyzer must operate continuously and measurements must be recorded continuously at a low chart speed (or equivalent data recording) and included with the test data. If a test is interrupted by an occurrence other than a malfunction of the test analyzer, only the block during which the interruption occurred shall be repeated.

(6) During each test block, manual adjustments to the electronics, gas, or reagent flows or periodic maintenance shall not be permitted. Automatic adjustments that the test analyzer performs by itself are permitted at any time.

(7) At least 4 hours prior to the start of the first test day of each test block, the test analyzer may be adjusted and/or serviced according to the periodic maintenance procedures specified in the manual referred to in § 53.4(b)(3). If a new block is to immediately follow a previous block, such adjustments or servicing may be done immediately after completion of the day's tests for the last day of the previous block and at the voltage and temperature specified for that day, but only on test days 3, 6, 9, and 12.

Note to § 53.23(e)(7): If necessary, the beginning of the test days succeeding such maintenance or adjustment may be delayed as required to complete the service or adjustment operation.

(8) All measurement response readings to be recorded shall be converted to concentration units or adjusted (if necessary) according to the calibration curve. Whenever a test atmosphere is to be measured but a stable reading is not required, the test atmosphere shall be sampled and measured long enough to cause a change in measurement response of at least 10% of full scale. Identify all readings and other pertinent data on the strip chart (or equivalent test data record). (*See* Figure B–1 illustrating the pattern of the required readings.)

TABLE B–4—LINE VOLTAGE AND ROOM TEMPERATURE TEST CONDITIONS

Test day	Line voltage,[1] rms	Room temperature,[2] °C	Comments
0	115	25	Initial set-up and adjustments.
1	125	20	
2	105	20	
3	125	30	Adjustments and/or periodic maintenance permitted at end of tests.
4	105	30	
5	125	20	
6	105	20	Adjustments and/or periodic maintenance permitted at end of tests.
7	125	30	Examine test results to ascertain if further testing is required.
8	105	30	
9	125	20	Adjustments and/or periodic maintenance permitted at end of tests.
10	105	20	
11	125	30	
12	105	30	Adjustments and/or periodic maintenance permitted at end of tests.
13	125	20	
14	105	20	
15	125	30	

[1] Voltage specified shall be controlled to ± 1 volt.

[2] Temperatures shall be controlled to ±1 °C.

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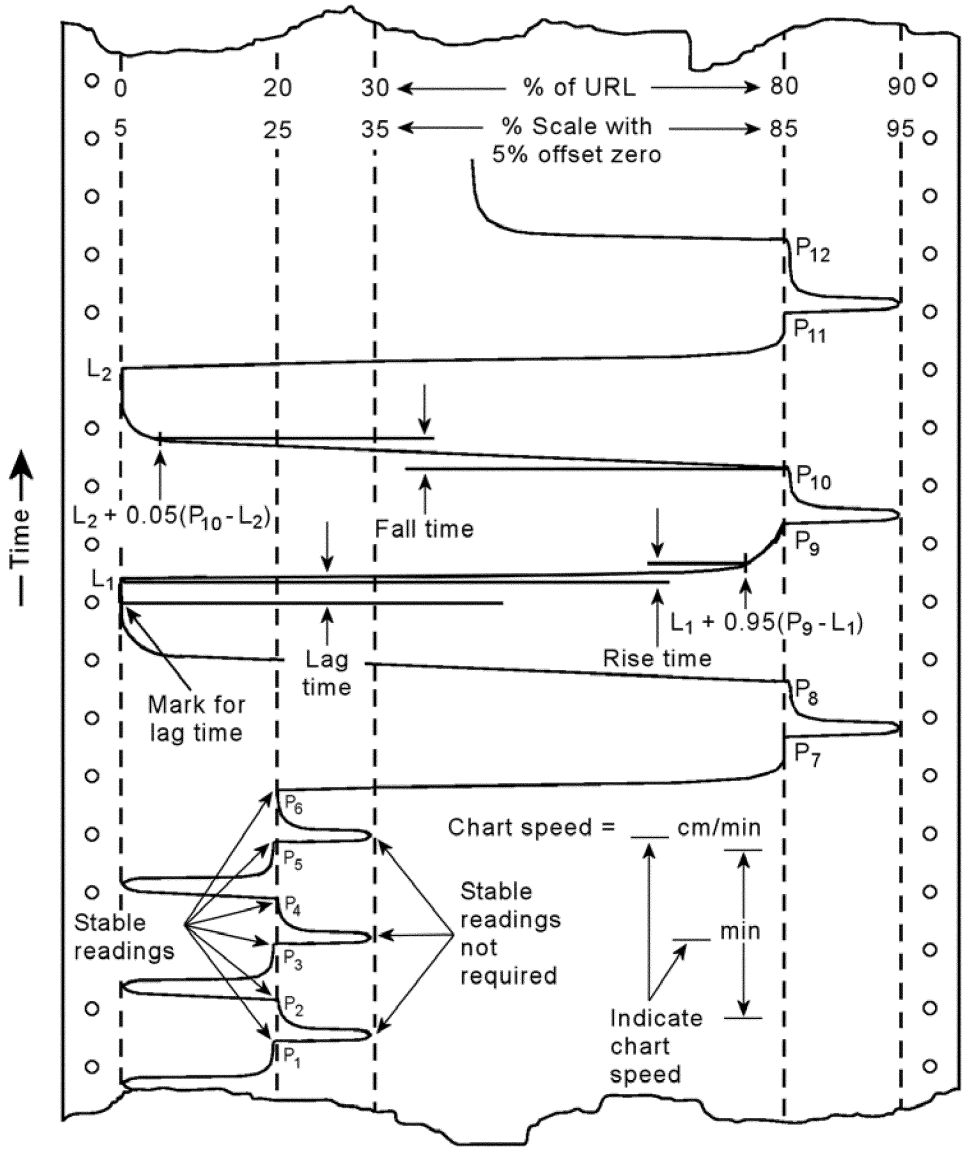


Figure B-1. Example showing the nature of the tracing obtained during the test sequence for 24-hour drift, lag time, rise time, fall time, and precision. The time scale has been greatly compressed.

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(9) *Test procedure.* (i) Arrange to generate pollutant test atmospheres as follows. Test atmospheres A_0, A_{20}, and A_{80} shall be maintained consistent during the tests and reproducible from test day to test day.

Test atmosphere	Pollutant concentration (percent)
A_0	Zero air.
A_{20}	20±5 of the upper range limit.
A_{30}	30±5 of the upper range limit.
A_{80}	80±5 of the upper range limit.
A_{90}	90±5 of the upper range limit.

(ii) For steps within paragraphs (e)(9)(xxv) through (e)(9)(xxxi) of this section, a chart speed of at least 10 centimeters per hour (or equivalent resolution for a digital representation) shall be used to clearly show changes in measurement responses. The actual chart speed, chart speed changes, and time checks shall be clearly marked on the chart.

(iii) *Test day 0.* Allow sufficient time for the test analyzer to warm up and stabilize at a line voltage of 115 volts and a room temperature of 25 °C. Adjust the zero baseline to 5 percent of chart (*see* § 53.21(b)) and recalibrate, if necessary. No further adjustments shall be made to the analyzer until the end of the tests on the third, sixth, ninth, or twelfth test day.

(iv) Measure test atmosphere A_0 until a stable measurement reading is obtained and record this reading (in

ppm) as Z'_n, where $n = 0$ (*see* Figure B–4 in appendix A of this subpart).

(v) [Reserved]

(vi) Measure test atmosphere A_{80}. Allow for a stable measurement reading and record it as S'_n, where $n = 0$.

(vii) The above readings for Z'_0 and S'_0 should be taken at least four (4) hours prior to the beginning of test day 1.

(viii) At the beginning of each test day, adjust the line voltage and room temperature to the values given in table B–4 of this subpart (or to the corresponding alternative temperature if a wider temperature range is being tested).

(ix) Measure test atmosphere A_0 continuously for at least twelve (12) continuous hours during each test day.

(x) After the 12-hour zero drift test (step ix) is complete, sample test atmosphere A_0. A stable reading is not required.

(xi) Measure test atmosphere A_{20} and record the stable reading (in ppm) as P_1. (*See* Figure B–4 in appendix A.)

(xii) Sample test atmosphere A_{30}; a stable reading is not required.

(xiii) Measure test atmosphere A_{20} and record the stable reading as P_2.

(xiv) Sample test atmosphere A_0; a stable reading is not required.

(xv) Measure test atmosphere A_{20} and record the stable reading as P_3.

(xvi) Sample test atmosphere A_{30}; a stable reading is not required.

(xvii) Measure test atmosphere A_{20} and record the stable reading as P_4.

(xviii) Sample test atmosphere A_0; a stable reading is not required.

(xix) Measure test atmosphere A_{20} and record the stable reading as P_5.

(xx) Sample test atmosphere A_{30}; a stable reading is not required.

(xxi) Measure test atmosphere A_{20} and record the stable reading as P_6.

(xxii) Measure test atmosphere A_{80} and record the stable reading as P_7.

(xxiii) Sample test atmosphere A_{90}; a stable reading is not required.

(xxiv) Measure test atmosphere A_{80} and record the stable reading as P_8. Increase the chart speed to at least 10 centimeters per hour.

(xxv) Measure test atmosphere A_0. Record the stable reading as L_1.

(xxvi) Quickly switch the test analyzer to measure test atmosphere A_{80} and mark the recorder chart to show, or otherwise record, the exact time when the switch occurred.

(xxvii) Measure test atmosphere A_{80} and record the stable reading as P_9.

(xxviii) Sample test atmosphere A_{90}; a stable reading is not required.

(xxix) Measure test atmosphere A_{80} and record the stable reading as P_{10}.

(xxx) Measure test atmosphere A_0 and record the stable reading as L_2.

(xxxi) Measure test atmosphere A_{80} and record the stable reading as P_{11}.

(xxxii) Sample test atmosphere A_{90}; a stable reading is not required.

(xxxiii) Measure test atmosphere A_{80} and record the stable reading as P_{12}.

(xxxiv) Repeat steps within paragraphs (e)(9)(viii) through (e)(9)(xxxiii) of this section, each test day.

(xxxv) If zero and span adjustments are made after the readings are taken on test days 3, 6, 9, or 12, complete all adjustments; then measure test atmospheres A_0 and A_{80}. Allow for a stable reading on each, and record the readings as Z'_n and S'_n, respectively, where n = the test day number (3, 6, 9, or 12). These readings must be made at least 4 hours prior to the start of the next test day.

(10) Determine the results of each day's tests as follows. Mark the recorder chart to show readings and determinations.

(i) *Zero drift.* (A) Determine the 12-hour zero drift by examining the strip chart pertaining to the 12-hour continuous zero air test. Determine the minimum (C_{min}.) and maximum (C_{max}.) measurement readings (in ppm) during this period of 12 consecutive hours, extrapolating the calibration curve to negative concentration units if necessary. Calculate the 12-hour zero drift (12*ZD*) as $12ZD = C_{max}.—C_{min}$. (*See* Figure B–5 in appendix A.)

(B) Calculate the 24-hour zero drift (24*ZD*) for the *n*-th test day as $24ZD_n = Z_n - Z_{n-1}$, or $24ZD_n = Z_n - Z'_{n-1}$ if zero adjustment was made on the previous test day, where $Z_n = \frac{1}{2}(L_1+L_2)$ for L_1 and L_2 taken on the *n*-th test day.

(C) Compare 12*ZD* and 24*ZD* to the zero drift limit specifications in table B–1. Both 12*ZD* and 24*ZD* must be within the specified limits (inclusive) to pass the test for zero drift.

(ii) *Span drift.*

(A) Calculate the span drift (*SD*) as:

$$SD_n = \frac{S_n - S_{n-1}}{S_{n-1}} \times 100\%$$

or if a span adjustment was made on the previous test day,

$$SD_n = \frac{S_n - S'_{n-1}}{S'_{n-1}} \times 100\%$$

where

$$S_n = \frac{1}{6}\sum_{i=7}^{12} P_i ,$$

n indicates the *n*-th test day, and *i* indicates the *i*-th measurement reading on the *n*-th test day.

(B) *SD* must be within the span drift limits (inclusive) specified in table B–1 to pass the test for span drift.

(iii) *Lag time.* Determine, from the strip chart (or alternative test data record), the elapsed time in minutes between the change in test concentration (or mark) made in step (xxvi) and the first observable (two times the noise level) measurement response. This time must be equal to or less than the lag time limit specified in table B–1 to pass the test for lag time.

(iv) *Rise time.* Calculate 95 percent of measurement reading P_9 and determine, from the recorder chart (or alternative test data record), the elapsed time between the first observable (two times noise level) measurement response and a response equal to 95 percent of the P_9 reading. This time must be equal to or less than the rise time limit specified in table B–1 to pass the test for rise time.

(v) *Fall time.* Calculate five percent of ($P_{10} - L_2$) and determine, from the strip chart (or alternative test record), the elapsed time in minutes between the first observable decrease in measurement response following reading P_{10} and a response equal to L_2 + five percent of ($P_{10} - L_2$). This time must be equal to or less than the fall time limit specification in table B–1 to pass the test for fall time.

(vi) *Precision.* Calculate precision (both P_{20} and P_{80}) for each test day as follows:

(A)

$$P_{20} = \frac{1}{URL}\sqrt{\frac{1}{5}\left[\sum_{i=1}^{6} P_i^2 - \frac{1}{6}\left(\sum_{i=1}^{6} P_i\right)^2\right]} \times 100\%$$

(B)

$$P_{80} = \frac{1}{URL}\sqrt{\frac{1}{5}\left[\sum_{i=7}^{12} P_i^2 - \frac{1}{6}\left(\sum_{i=7}^{12} P_i\right)^2\right]} \times 100\%$$

(C) Both P_{20} and P_{80} must be equal to or less than the precision limits specified in table B–1 to pass the test for precision.

TABLE B–5—SYMBOLS AND ABBREVIATIONS

B_L	Analyzer reading at the specified *LDL* test concentration for the *LDL* test.
B_z	Analyzer reading at 0 concentration for the *LDL* test.
DM	Digital meter.
$C_{max.}$ ...	Maximum analyzer reading during the 12*ZD* test period.
$C_{min.}$	Minimum analyzer reading during the 12*ZD* test period.
i	Subscript indicating the *i*-th quantity in a series.
IE	Interference equivalent.
L_1	First analyzer zero reading for the 24*ZD* test.

TABLE B–5—SYMBOLS AND ABBREVIATIONS—Continued

L_2	Second analyzer zero reading for the 24*ZD* test.
n	Subscript indicating the test day number.
P	Analyzer reading for the span drift and precision tests.
P_i	The *i*-th analyzer reading for the span drift and precision tests.
P_{20}	Precision at 20 percent of URL.
P_{80}	Precision at 80 percent of URL.
ppb	Parts per billion of pollutant gas (usually in air), by volume.
ppm	Parts per million of pollutant gas (usually in air), by volume.
R	Analyzer reading of pollutant alone for the *IE* test.

TABLE B–5—SYMBOLS AND ABBREVIATIONS—Continued

R_I	Analyzer reading with interferent added for the *IE* test.
r_i	The *i*-th analyzer or DM reading for the noise test.
S	Standard deviation of the noise test readings.
S_0	Noise value (*S*) measured at 0 concentration.
S_{80}	Noise value (*S*) measured at 80 percent of the URL.
S_n	Average of P_7 * * * P_{12} for the n-th test day of the SD test.
S'_n	Adjusted span reading on the *n*-th test day.
SD	Span drift
URL	Upper range limit of the analyzer's measurement range.

TABLE B–5—SYMBOLS AND ABBREVIATIONS—Continued

Z	Average of L_1 and L_2 readings for the 24ZD test.
Z_n	Average of L_1 and L_2 readings on the *n*-th test day for the 24ZD test.
Z'_n	Adjusted analyzer zero reading on the *n*-th test day for the 24ZD test.
ZD	Zero drift.
12*ZD*	12-hour zero drift.
24*ZD*	24-hour zero drift.

Appendix A to Subpart B of Part 53—Optional Forms for Reporting Test Results

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NOISE TEST DATA

Applicant _____ Date _____

Analyzer _____ Pollutant _____

Range _____ Test No. _____

READING NUMBER (i)	TIME	0% of URL		80% of URL	
		DM READING	r_i, ppm	DM READING	r_i, ppm
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
STD. DEVIATION		S_0 =		S_{80} =	

Figure B-2. Form for noise test data (see §53.23(b)).

LDL and INTERFERENCE TEST DATA

Applicant _____ Date _____

Analyzer _____ Pollutant _____

TEST PARAMETER		READING or CALCULATION	TEST NUMBER														
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
LOWER DETECTABLE LIMIT		B_Z															
		B_L															
		$LDL = B_L$ □ B_Z															
INTER-FERENCE EQUIV-ALENT	1	R_1															
		R_{I1}															
		$IE = R_{I1} - R_1$															
	2	R_2															
		R_{I2}															
		$IE = R_{I2} - R_2$															
	3*	R_3															
		R_{I3}															
		$IE = R_{I3} - R_3$															
	4*	R_4															
		R_{I4}															
		$IE = R_{I4} - R_4$															
	5*	R_5															
		R_{I5}															
		$IE = R_{I5} - R_5$															
	TOTAL*	$\sum_{i=1}^{n} \lvert IE_i \rvert$															

*If required.

Figure B-3. Form for test data and calculations for lower detectable limit (LDL) and interference equivalent (IE) (see § 53.23(c) and (d)).

DRIFT AND PRECISION TEST DATA

Applicant _____ Date _____

Analyzer _____ Pollutant _____

	ANALYZER READING, ppm															
TEST DAY	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
DATE																
P_1																
P_2																
P_3																
P_4																
P_5																
P_6																
P_7																
P_8																
P_9																
P_{10}																
P_{11}																
P_{12}																
$S_n = \frac{1}{6}\sum_{i=7}^{12} P_i$																
L_1																
L_2																
Z'_n																
S'_n																
C_{max}																
C_{min}																

Figure B-4. Form for drift and precision test data (see § 53.23(e)).

CALCULATION OF ZERO DRIFT, SPAN DRIFT, AND PRECISION

Applicant _____ Date _____

Analyzer _____ Pollutant _____

TEST PARAMETER		CALCULATION	TEST DAY (n)															
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
ZERO DRIFT	12 HOUR	$12ZD = C_{max} - C_{min}$																
	24 HOUR	$Z = (L_1 + L_2)/2$																
		$24ZD = Z_n - Z_{n-1}$																
		$24ZD = Z'_n - Z'_{n-1}$																
SPAN DRIFT	24 HOUR	$S_n = \frac{1}{6}\sum_{i=7}^{12} P_i$																
		$SD_n = \frac{S_n - S_{n-1}}{S_{n-1}} \times 100\%$																
		$SD_n = \frac{S_n - S'_{n-1}}{S'_{n-1}} \times 100\%$																
PREC-ISION	20% URL (P_{20})	P_{20} = STANDARD DEVIATION of ($P_1 \ldots P_6$)																
	80% URL (P_{80})	P_{80} = STANDARD DEVIATION of ($P_7 \ldots P_{12}$)																

Figure B-5. Form for calculating zero drift, span drift, and precision (§ 53.23(e)).

TEST DATA SUMMARY

Applicant _____ Analyst _____

Analyzer _____ Pollutant _____

Range _____ Other information _____
Test dates _____

Performance Parameter		Table B-1 Spec.	Test Number (first set)							Test Number (second set)								Number of Failures	Pass or Fail
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
Noise, ppm	0% URL																		
	80% URL																		
LDL (> 2 x 0% noise)																			
Interference Equivalent, ppm	IE1																		
	IE2																		
	IE3																		
	IE4																		
	IE5																		
	IE6																		
	Total																		
Zero Drift, ppm	12 hr																		
	24 hr.																		
Span Drift, %	80% URL																		
Lag Time, min																			
Rise Time, min																			
Fall Time, min																			
Precision, percent	20% URL																		
	80% URL																		

Figure B-6. Form for reporting a summary of the test results (see § 53.23).

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PART 58—AMBIENT AIR QUALITY SURVEILLANCE

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

Authority: 42 U.S.C. 7403, 7410, 7601(a), 7611, and 7619.

Subpart B—[Amended]

6. Section 58.10, is amended by adding paragraph (a)(7) to read as follows:

§ 58.10 Annual monitoring network plan and periodic network assessment.

(a) * * *

(7) A plan for establishing CO monitoring sites in accordance with the requirements of appendix D to this part shall be submitted to the Administrator by July 1, 2012. The plan shall provide for all required monitoring stations to be operational by January 1, 2013.

* * * * *

7. Section 58.13 is amended by adding paragraph (e) to read as follows:

§ 58.13 Monitoring network completion.

* * * * *

(e) The network of CO monitors must be physically established no later than January 1, 2013, and at that time, must be operating under all of the requirements of this part, including the requirements of appendices A, C, D, and E to this part.

8. Appendix D to Part 58 is amended by revising section 4.2 to read as follows:

Appendix D to Part 58—Network Design Criteria for Ambient Air Quality Monitoring

* * * * *

4.2 Carbon Monoxide (CO) Design Criteria.

4.2.1 General Requirements. (a) One CO monitor is required to operate co-located with any required near-road NO_2 monitor, as required in Section 4.3.2 of this part, in CBSAs having a population of 1,000,000 or more persons. Continued operation of existing, but non-required SLAMS CO sites using an FRM or FEM is required until discontinuation is approved by the EPA Regional Administrator, per section § 58.14 of this part.

4.2.2 Regional Administrator Required Monitoring.

(a) The Regional Administrators, in collaboration with states, may require additional CO monitors above the minimum number of monitors required in 4.2.1 of this part, where the minimum monitoring requirements are not sufficient to meet monitoring objectives. The Regional Administrator may require, at his/her discretion, additional monitors in situations where data or other information suggest that CO concentrations may be approaching or exceeding the NAAQS. Such situations include, but are not limited to, (1) Characterizing impacts on ground-level concentrations due to stationary CO sources, (2) characterizing CO concentrations in urban downtown areas or urban street canyons, and (3) characterizing CO concentrations in areas that are subject to high ground level CO concentrations particularly due or enhanced by topographical and meteorological impacts.

(b) The Regional Administrator and the responsible State or local air monitoring agency should work together to design and/or maintain the most appropriate CO network to address the data needs for an area, and include all monitors under this provision in the annual monitoring network plan.

4.2.3 CO Monitoring Spatial Scales. (a) Microscale and middle scale measurements are the most useful site classifications for CO monitoring sites since most people have the potential for exposure on these scales. Carbon monoxide maxima occur primarily in areas near major roadways and intersections with high traffic density and often in areas with poor atmospheric ventilation.

(1) *Microscale*—Microscale measurements typically represent areas in close proximity to major roadways, within street canyons, over sidewalks, and in some cases, point and area sources. Emissions from roadways result in high ground level CO concentrations at the microscale, where concentration gradients generally exhibit a marked decrease with increasing downwind distance from major roads, or within urban downtown areas including urban street canyons. Emissions from stationary point and area sources, and non-road sources may, under certain plume conditions, result in high ground level concentrations at the microscale.

(2) *Middle scale*—Middle scale measurements are intended to represent areas with dimensions from 100 meters to 0.5 kilometer. In certain cases, middle scale measurements may apply to areas that have a total length of several kilometers, such as "line" emission source areas. This type of emission sources areas would include air quality along a commercially developed street or shopping plaza, freeway corridors, parking lots and feeder streets.

* * * * *

9. Appendix E to Part 58 is amended by revising sections 2 and 6.2(a), 6.2(b), 6.2(c), and Table E–4 to read as follows:

Appendix E to Part 58—Probe and Monitoring Path Siting Criteria for Ambient Air Quality Monitoring

* * * * *

2. Horizontal and Vertical Placement

The probe or at least 80 percent of the monitoring path must be located between 2 and 15 meters above ground level for all ozone and sulfur dioxide monitoring sites, and for neighborhood or larger spatial scale Pb, PM_{10}, $PM_{10-2.5}$, $PM_{2.5}$, NO_2, and carbon monoxide sites. Middle scale $PM_{10-2.5}$ sites are required to have sampler inlets between 2 and 7 meters above ground level. Microscale Pb, PM_{10}, $PM_{10-2.5}$, and $PM_{2.5}$ sites are required to have sampler inlets between 2 and 7 meters above ground level. Microscale near-road NO_2 monitoring sites are required to have sampler inlets between 2 and 7 meters above ground level. The inlet probes for microscale carbon monoxide monitors that are being used to measure concentrations near roadways must be between 2 and 7 meters above ground level. The probe or at least 90 percent of the monitoring path must be at least 1 meter vertically or horizontally away from any supporting structure, walls, parapets, penthouses, *etc.,* and away from dusty or dirty areas. If the probe or a significant portion of the monitoring path is located near the side of a building or wall, then it should be located on the windward side of the building relative to the prevailing wind direction during the season of highest concentration potential for the pollutant being measured.

* * * * *

6. * * *

6.2 Spacing for Carbon Monoxide Probes and Monitoring Paths. (a) Near-road or urban street canyon CO monitoring microscale sites are intended to provide a measurement of the influence of the immediate source on the pollution exposure on the adjacent area. In order to provide some reasonable consistency and comparability in the air quality data from microscale sites, the CO monitor probe shall be as near as practicable to the outside nearest edge of the traffic lanes of the target road segment; but shall not be located at a distance greater than 50 meters, in the horizontal, from the outside nearest edge of the traffic lanes of the target road segment.

(b) Downtown urban area or urban street canyon (microscale) CO monitor inlet probes must be located at least
10 meters from an intersection and preferably at a midblock location. Midblock locations are preferable to intersection locations because intersections represent a much smaller portion of downtown space than do the streets between them. Pedestrian exposure is probably also greater in street canyon/corridors than at intersections.

(c) In determining the minimum separation between a neighborhood scale monitoring site and a specific roadway, the presumption is made that measurements should not be substantially influenced by any one roadway. Computations were made to determine the separation distance, and Table E–2 of this appendix provides the required minimum separation distance between roadways and a probe or
90 percent of a monitoring path. Probes or monitoring paths that are located closer to roads than this criterion allows should not be classified as neighborhood scale, since the measurements from such a site would closely represent the middle scale. Therefore, sites not meeting this criterion should be classified as middle scale.

* * * * *

TABLE E–4 OF APPENDIX E TO PART 58—SUMMARY OF PROBE AND MONITORING PATH SITING CRITERIA

Pollutant	Scale (maximum monitoring path length, meters)	Height from ground to probe, inlet or 80% of monitoring path [1]	Horizontal and vertical distance from supporting structures [2] to probe, inlet or 90% of monitoring path [1] (meters)	Distance from trees to probe, inlet or 90% of monitoring path [1] (meters)	Distance from roadways to probe, inlet or monitoring path [1] (meters)
SO_2 [3,4,5,6]	Middle (300 m) ..... Neighborhood Urban, and Regional (1 km).	2–15	>1	>10	N/A.

TABLE E–4 OF APPENDIX E TO PART 58—SUMMARY OF PROBE AND MONITORING PATH SITING CRITERIA—Continued

Pollutant	Scale (maximum monitoring path length, meters)	Height from ground to probe, inlet or 80% of monitoring path [1]	Horizontal and vertical distance from supporting structures [2] to probe, inlet or 90% of monitoring path [1] (meters)	Distance from trees to probe, inlet or 90% of monitoring path [1] (meters)	Distance from roadways to probe, inlet or monitoring path [1] (meters)
CO [4,5,7]	Micro, middle (300 m). Neighborhood (1 km).	2–7: 2–15	>1	>10	*2–10 for downtown urban area or street canyon microscale;* ≤50 for near-road microscale; *see* Table E–2 of this appendix for middle and neighborhood scales.
O_3 [3,4,5]	Middle (300 m) Neighborhood, Urban, and Regional (1 km).	2–15	>1	>10	*See* Table E–1 of this appendix for all scales.
NO_2 [3,4,5]	Micro (Near-road [50–300]). Middle (300m) Neighborhood, Urban, and Regional (1 km).	2–7 (micro); 2–15 (all other scales)	>1	>10	≤50 meters for near-road microscale; *See* Table E–1 of this appendix for all other scales.
Ozone precursors (for PAMS) [3,4,5].	Neighborhood and Urban (1 km).	2–15	>1	>10	*See* Table E–4 of this appendix for all scales.
PM,Pb [3,4,5,6,8]	Micro: Middle, Neighborhood, Urban and Regional.	2–7 (micro); 2–7 (middle $PM_{10-2.5}$); 2–15 (all other scales)	>2 (all scales, horizontal distance only)	>10 (all scales)	2–10 (micro); *see* Figure E–1 of this appendix for all other scales.

N/A—Not applicable.

[1] Monitoring path for open path analyzers is applicable only to middle or neighborhood scale CO monitoring, middle, neighborhood, urban, and regional scale NO_2 monitoring, and all applicable scales for monitoring SO_2,O_3, and O_3 precursors.

[2] When probe is located on a rooftop, this separation distance is in reference to walls, parapets, or penthouses located on roof.

[3] Should be >20 meters from the drip-line of tree(s) and must be 10 meters from the drip-line when the tree(s) act as an obstruction.

[4] Distance from sampler, probe, or 90% of monitoring path to obstacle, such as a building, must be at least twice the height the obstacle protrudes above the sampler, probe, or monitoring path. Sites not meeting this criterion may be classified as middle scale (*see* text).

[5] Must have unrestricted airflow 270 degrees around the probe or sampler; 180 degrees if the probe is on the side of a building or a wall.

[6] The probe, sampler, or monitoring path should be away from minor sources, such as furnace or incineration flues. The separation distance is dependent on the height of the minor source's emission point (such as a flue), the type of fuel or waste burned, and the quality of the fuel (sulfur, ash, or lead content). This criterion is designed to avoid undue influences from minor sources.

[7] For microscale CO monitoring sites in downtown areas or street canyons (not at near-road NO_2 monitoring sites), the probe must be >10 meters from a street intersection and preferably at a midblock location.

[8] Collocated monitors must be within 4 meters of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference.

* * * * *

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Part VII

Small Business Administration

13 CFR Parts 121 and 124
Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

RIN 3245–AF53

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule makes changes to the regulations governing the section 8(a) Business Development (8(a) BD) program, the U.S. Small Business Administration's (SBA or Agency) size regulations, and the regulations affecting Small Disadvantaged Businesses (SDBs). It is the first comprehensive revision to the 8(a) BD program in more than ten years. Some of the changes involve technical issues such as changing the term "SIC code" to "NAICS code" to reflect the national conversion to the North American Industry Classification System (NAICS).

DATES: *Effective Date:* This rule is effective March 14, 2011.

Compliance Dates: Except for 13 CFR 124.604, the revisions to 13 CFR part 124 apply to all applications for the 8(a) BD program pending as of March 14, 2011 and all 8(a) procurement requirements accepted by SBA on or after March 14, 2011. These rules do not apply to any 8(a) BD appeals pending before SBA's Office of Hearings and Appeals. The requirements of § 124.604 apply to all 8(a) BD program participants as of September 9, 2011, unless SBA further delays implementation through a Notice in the **Federal Register**. The amendments to 13 CFR part 121 apply with respect to all solicitations issued and all certifications as to size made after March 14, 2011.

FOR FURTHER INFORMATION CONTACT: LeAnn Delaney, Deputy Associate Administrator, Office of Business Development, at (202) 205–5852, or *leann.delaney@sba.gov*.

SUPPLEMENTARY INFORMATION: On October 28, 2009, SBA published in the **Federal Register** a comprehensive proposal to revise the 8(a) BD program and several proposed revisions to SBA's size regulations. 74 FR 55694. Some of the proposed changes involve technical issues. Others are more substantive and result from SBA's experience in implementing the current regulations. In addition, SBA has made changes in this final rule in response to comments received to its notice of proposed rulemaking. SBA has learned through experience that certain of its rules governing the 8(a) BD program are too restrictive and serve to unduly preclude firms from being admitted to the program. In other cases, SBA determined that a rule is too expansive or indefinite and sought to restrict or clarify those rules. In one case, SBA made wording changes to correct past public or agency misinterpretation. Additionally, this rule makes changes to address situations that were not contemplated when the previous revisions to the 8(a) BD program were made. The proposed rule called for a 60-day comment period, with comments required to be received by SBA by December 28, 2009. The overriding comment SBA received in the first few weeks after the publication was to extend the comment period. Commenters felt that the nature of the issues raised in the rule and the timing of comments during the holiday season required more time for affected businesses to adequately review the proposal and prepare their comments. In response to these comments, SBA published a notice in the **Federal Register** on December 9, 2009, extending the comment period an additional 30 days to January 28, 2010. 74 FR 65040. In addition to providing a 90-day comment period, SBA also solicited the public's views regarding the proposal through a series of listening sessions held throughout the country. SBA held listening sessions in Washington, DC on December 10 and 11, 2009; in New York, New York on December 16, 2009; in Seattle, Washington on December 17, 2009; in Boston, Massachusetts on December 18, 2009; in Dallas, Texas on January 11, 2010; in Atlanta, Georgia on January 12, 2010; in Albuquerque, New Mexico and Miami, Florida on January 14, 2010; and in Chicago, Illinois and Los Angeles, California on January 19, 2010.

Additionally, SBA conducted Tribal consultations pursuant to Executive Order 13175, Tribal Consultations, on December 16, 2009 in Seattle, Washington; on January 14, 2010 in Albuquerque, New Mexico; and on January 27, 2010 for Anchorage, Alaska in Vienna, Virginia via a video teleconference with representatives located in Anchorage, Alaska.

In addition to the many comments received from those testifying at the various public forums and Tribal consultations conducted around the country, SBA received 231 timely written comments during the 90-day comment period, with a high percentage of commenters favoring the proposed changes. A substantial number of commenters applauded SBA's effort to clarify and address misinterpretations of the rules. For the most part, the comments supported the substantive changes proposed by SBA. Additionally, in response to specific requests for information, SBA received comments with alternative approaches on many aspects of the proposed rule.

The proposed rule contained changes to SBA's size regulations (part 121) and the regulations governing SBA's 8(a) BD program (part 124). SBA received substantive comments on the proposed changes to both of these program areas. With the exception of comments which did not set forth any rationale or make suggestions, SBA discusses and responds fully to all the comments below.

Summary of Comments and SBA's Responses

Part 121

SBA received a substantial number of comments addressing the proposed changes to the size rules.

Production Pools

In response to the proposed changes on affiliation, one commenter noted that § 121.103(b) was not entirely consistent with the statutory authority regarding exclusions from affiliation for certain types of small business pools. Specifically, section 9(d) of the Small Business Act (the Act), 15 U.S.C. 638(d), authorizes an exclusion from affiliation for research and development pools. Similarly, section 11 of the Act, 15 U.S.C. 640, authorizes an exclusion from affiliation for defense production pools. SBA's current regulation set forth in § 121.103(b)(3) inadvertently omitted the reference to defense production pools. It was never SBA's intent to exclude defense production pools from the exception to affiliation. The words "or for defense production" were inadvertently omitted from § 121.102(b)(3) after the words "joint program of research and development." Accordingly, this final rule corrects this omission.

Exception to Affiliation for Mentor/Protégé Programs

The proposed rule intended to clarify when SBA would consider a protégé firm not to be affiliated with its mentor based on assistance received from the mentor through a mentor/protégé agreement. In practice, the former regulation was at times misconstrued by other Federal agencies that believed they could establish mentor/protégé programs and exempt protégés from SBA's size affiliation rules on their own. That was never SBA's intent. The

exception to affiliation contained in § 121.103(b)(6) is meant to apply to SBA's 8(a) BD mentor/protégé program and other Federal mentor/protégé programs that specifically authorize an exception to affiliation in their authorizing statute. Because of the business development purposes of the 8(a) BD program, SBA administratively established an exception to affiliation for protégé firms. Specifically, protégé firms are not affiliated with their mentors based on assistance received from their mentors through an SBA-approved 8(a) BD mentor/protégé agreement. That exception exists in the current rule and remained in the rule as proposed. The proposed rule also clarified that an exception to affiliation for protégés in other Federal mentor/protégé programs will be recognized by SBA only where specifically authorized by statute (*e.g.,* the Department of Defense mentor/protégé program) or where SBA has authorized an exception to affiliation for a mentor/protégé program of another Federal agency under the procedures set forth in § 121.903. The Supplementary Information to the proposed rule noted that SBA did not anticipate approving exceptions to affiliation to agencies seeking to have such an exception for their mentor/protégé programs except in limited circumstances. SBA reasoned that the 8(a) BD program is a unique business development program that is unlike other Federal programs.

SBA received a number of comments in response to this proposal. Several comments supported the current requirement, that was not amended in the proposed rule, that SBA would not find affiliation between a protégé firm and its mentor based solely on the assistance received under a mentor/protégé agreement. SBA does not change that provision in this final rule.

SBA received comments both in support and of and in opposition to the clarification contained in the proposed rule that other agencies could create mentor/protégé programs containing an exclusion to affiliation only where authorized by statute or by SBA after requesting such an exception under § 121.903 of SBA's size regulations. Those supporting the proposal recognized that were agencies able to waive SBA's affiliation rules whenever they thought it to be appropriate (*i.e.,* without requesting or receiving approval from SBA), legitimate small businesses could be adversely affected. Several commenters stated that other agencies should be able to construct mentor/protégé programs for their purposes as they see fit. Specifically, these commenters believed that if another agency wanted to allow an exclusion from affiliation for a joint venture between a protégé firm and its mentor for a program of that other agency, the agency should be able to do so. By statute, SBA is the agency authorized to determine size, specifically including whether a firm qualifies as a small business for any Federal program. *See* 15 U.S.C. 632(a). In particular, the Act specifies that "[u]nless authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard * * * is [among other things] approved by the [SBA] Administrator." 15 U.S.C. 632(a)(2)(C). SBA firmly believes that another agency should not be able to exempt firms from SBA's affiliation rules (and in effect make program-specific size rules) without SBA's approval. SBA's regulations set forth a formal process that a Federal department or agency must follow in order to request, and possibly receive SBA's approval, to deviate from SBA's size rules, including those relating to affiliation. *See* 13 CFR 121.903.

The 8(a) BD program is a unique Federal program. It is not a contracting program, but rather a business development program. The program is designed to assist in the business development of disadvantaged small businesses through management and technical assistance, contractual assistance, and other means. Requiring mentors to provide business development assistance to protégé firms in order for a mentor/protégé relationship to receive an exclusion from affiliation is merely one tool to assist in the business development of 8(a) firms. SBA's size regulations generally aggregate the receipts/employees of joint venture partners for size purposes, and SBA believes that is the correct approach since the combined resources of the partners are available to the joint venture. The exclusion to affiliation for mentor/protégé relationships approved for the 8(a) BD program is designed to encourage the business development purposes of the 8(a) BD program. Where a mentor/protégé program of another agency is also intended to promote the business development of specified small business concerns, SBA would be inclined to approve the agency's request for an exclusion from affiliation because it would serve the same purpose as the exclusion from affiliation for 8(a) mentor/protégé relationships. As such, the final rule continues to allow exclusions from affiliation for mentor/protégé relationships of other agencies only where specifically authorized by statute or where the agency asks for and SBA grants such an exclusion.

Joint Ventures

The proposed rule also amended the size rules pertaining to joint ventures. Under current § 121.103(h), a joint venture is an entity with limited duration. Specifically, the current regulation limits a specific joint venture to submitting no more than three offers over a two-year period. The proposed rule changed this requirement to allow a specific joint venture to be awarded three contracts over a two-year period. It also clarified that the partners to a joint venture could form a second joint venture and be awarded three additional contracts, and a third joint venture to be awarded three more. At some point, however, such a longstanding relationship or contractual dependence could lead to a finding of general affiliation, even in the 8(a) mentor/protégé joint venture context. The proposed rule also asked for comments on other alternatives, including limiting the number of contract awards that the same partners to one or more joint ventures could receive without the partners being deemed affiliates for all purposes.

Many commenters supported the proposed change from three offers over two years to three contract awards over two years, noting that this change would provide more certainty to offerors. One commenter asked for more clarity regarding what constitutes a contract. That commenter was concerned that a contract could be awarded and then ultimately not performed due to a protest or otherwise and that such an award would still count against the three contract award limit for that joint venture. SBA does not see this as a significant problem. As previously noted, two partners could form an additional joint venture entity and that new entity could be awarded three additional contracts. The fact that one of the three contracts awarded to the first joint venture entity was not performed in no way inhibits the ability of the two firms from forming a new joint venture and receiving additional contracts. As such, SBA does not adopt the comment that recommended the word contract to mean only a contract that was kept and performed by the joint venture.

The majority of comments received also preferred limiting one joint venture to three contract awards (and allowing the firms to form additional joint venture entities for additional contract awards) rather than limiting the overall

number of contracts that two (or more) firms acting as a joint venture could receive. Several commenters contended that they often go after and are awarded many small dollar projects through joint venture relationships. Even though the combined value of the contracts awarded could be very small, the alternative option, which would prohibit no more than five total awards to two firms acting through a joint venture, would prohibit them from seeking and being awarded additional contracts. They felt that such a prohibition would adversely affect their overall business development. Other commenters observed that limiting the total number of contract awards to a specific number (*e.g.,* five) would make mentor/protégé relationships short term, which would encourage less business development assistance to protégé firms in the long term. SBA concurs with these comments and does not adopt this alternative in this final rule.

The proposed rule also clarified when SBA will determine whether the three contract awards in two years requirement has been met. The proposal set the time at which compliance with the three awards in two years rule should be determined as of the date a concern submits a written self-certification that it is small as part of its initial offer including price. This point in time coincides with the time at which size is determined and SBA believed that consistency dictated this approach. Commenters supported this approach, particularly favoring allowing joint venture offerors the flexibility to ultimately be awarded more than three contracts if they had not yet received three awards as of the date they submitted several offers and happened to win more than one of the awards pertaining to those offers. A few commenters specifically supported the example contained in the supplementary information to the proposed rule and suggested that it be included in the actual regulatory text. SBA sees no reason not to include the example in the regulation if that will help further clarify SBA's intent. As such, SBA has added the example to the regulatory text for § 121.103(h) in this final rule.

The proposed rule also clarified that while a joint venture may or may not be a separate legal entity (*e.g.,* a limited liability company (LLC)), it must exist through a written document. Thus, even an "informal" joint venture must have a written agreement between the partners. In addition, the rule clarified SBA's longstanding policy that a joint venture may or may not be populated (*i.e.,* have its own separate employees). The supplementary information to the proposed rule indicated that whether a joint venture needs to be populated or have separate employees would depend upon the legal structure of the joint venture. If a joint venture is a separate legal entity, SBA thought that it must have its own employees. If a joint venture merely exists through a written agreement between two or more individual business entities, then SBA felt that it need not have its own separate employees and employees of each of the individual business entities may perform work for the joint venture. SBA received several comments on this interpretative language. A few commenters asked SBA to clearly delineate what "populated" means in the regulatory text. The final rule adopts this comment and has identified that a populated joint venture is joint venture formed as a separate legal entity that has its own separate employees.

The majority of comments on the provision addressing the population of joint ventures believed that any regulation that required a populated joint venture would unintentionally deprive joint venture partners of the opportunity to structure joint ventures as LLCs because of the requirements contained in other regulatory provisions. For example, in an 8(a) joint venture, § 124.513(c)(2) requires an employee of the 8(a) Participant to be the project manager. If an LLC was populated, so that it hired its own employees to perform an 8(a) contract, the project manager hired by the LLC to oversee the project (even if he/she came from the 8(a) Participant) would not be an employee of the 8(a) Participant. Similarly, § 124.513(d) requires the 8(a) Participant to a joint venture to perform a specific percentage of work ("a significant portion" in the regulations prior to this final rule, and at least 40% of the work done by the joint venture in this final rule). If an LLC is populated, the LLC is performing the work; the work is not being performed individually by the two (or more) partners to the joint venture. SBA understands these concerns and has made several changes in this final rule in response to them. SBA believes that the individual businesses involved in the joint venture should determine whether to form a separate legal entity for the joint venture (*e.g.,* LLC) and, if they do, whether or not to populate the new entity. SBA will not require any joint venture to be populated, and will not find a joint venture ineligible merely because it is or is not populated. In addition, SBA believes clarifications need to be made in the substantive 8(a) rules between populated and unpopulated joint ventures. The requirement contained in § 124.513(d) that an 8(a) Participant must perform at least 40% of the work done by a joint venture, and the requirement contained in § 124.513(c)(2) that the project manager be an employee of the 8(a) Participant, make sense only for unpopulated joint ventures or joint ventures populated only with administrative personnel. For joint ventures populated with individuals intended to perform any awarded contracts, the joint venture must demonstrate that the 8(a) Participant to the joint venture controls the joint venture, is responsible for the books and records of the joint venture, owns at least 50% of the joint venture, and receives profits commensurate with its ownership interest. SBA has made these clarifications in § 124.513 of the final rule. A detailed description of these changes is included below in the discussion of the comments on Part 124.

A few commenters questioned SBA's application of the ostensible subcontractor rule in § 121.103(h)(4). Specifically, they sought clarification as to whether SBA applied the ostensible subcontractor rule only at the time of size certification (as part of the firm's offer for a particular contract) or if it also applied after contract performance. SBA believes that it would not make sense to allow a firm to submit an offer proposing how it will perform a contract in which it will perform the primary and vital portions of a contract, and thus qualify individually as a small business, and then subcontract out the entire contract after award and have the contract count as an award to small business. SBA believes that if options are exercised on such a contract, the options should not count as a small business award if the aggregate size of the contractor and its ostensible subcontractor exceeds the applicable size standard. The final rule adds clarifying language to a new § 121.404(g)(4).

Exclusion From Affiliation for Mentor/Protégé Joint Ventures

The proposed rule also attempted to clarify that any joint venture seeking to use the 8(a) mentor/protégé status as a basis for an exception to affiliation requirements must follow the 8(a) requirements (*i.e.,* it must meet the content requirements set forth in § 124.513(c) and the performance of work requirements set forth in § 124.513(d)). Although SBA does not approve joint venture agreements for procurements outside the 8(a) program, if the size of a joint venture claiming an

exception to affiliation is protested, the requirements of § 124.513(c) and (d) must be met in order for the exception to affiliation to apply. For purposes of clarification § 124.513(d) references the percentage of work requirements of § 124.510 which include the percentage of work requirements set forth in § 125.6.

In connection with a size protest, one commenter opposed requiring the 8(a) joint venture rules to be met in order for a mentor/protégé joint venture to receive an exclusion from affiliation for a non-8(a) contract. This commenter did not believe it was appropriate to apply 8(a) rules to non-8(a) contracts, thinking that such a requirement would impose an undue burden on 8(a) firms seeking non-8(a) contracts. SBA disagrees. Receiving an exclusion from affiliation for any non-8(a) contract is a substantial benefit that only SBA-approved mentor/protégé relationships can receive. The intent behind the exclusion generally is to promote business development assistance to protégé firms from their mentors. Without a requirement that a protégé firm must be the project manager and take an active and substantial role in contract performance on a non-8(a) joint venture with its mentor, the entire small business contract could otherwise be performed by an otherwise large business.

Overall, however, SBA received many favorable comments to this proposed change. Commenters noted that without such a clarification, a joint venture between an 8(a) protégé firm and its large business mentor on a non-8(a) small business contract could perform the contract with minimal work being performed by the protégé 8(a) firm. The commenters believed such a scenario was inappropriate. SBA agrees. SBA recognized this potential abuse of small business contracting programs and has not changed the requirement in this final rule that a mentor/protégé joint venture seeking an exception to affiliation on a non-8(a) contract must follow the 8(a) requirements regarding control and performance by the 8(a) protégé firm.

SBA also requested comments on whether to continue to allow the exclusion to affiliation for mentor/protégé joint ventures on non-8(a) contracts, or whether the exclusion to affiliation should apply only to 8(a) contracts. Related to this inquiry was the proposed change that would allow the exclusion to apply not just to Federal prime contracts, but to subcontracts as well. This change was particularly important to the Department of Energy, which has a significant amount of contracting activity go through government owned contractor operated (GOCO) facilities, and the contracts between the GOCO and a contractor technically are government subcontracts. The overwhelming majority of comments supported permitting the exclusion to affiliation for both 8(a) and non-8(a) contracts. They believed that performing non-8(a) contracts is just as or more important in a firm's business development than performing 8(a) contracts. They noted that understanding and being able to perform non-8(a) government contracts is critical to a firm's ultimate survival and success after leaving the 8(a) BD program, and getting that experience through a mentor/protégé relationship while still in the 8(a) BD program is essential. In addition, the majority of commenters supported the proposed change applying the exclusion to affiliation to both government subcontracts as well as prime contracts. They viewed this extension as further assisting 8(a) Participants realize the business development purposes of the 8(a) BD program. As such, this final rule continues to allow the exclusion to affiliation for mentor/protégé joint ventures for all government prime contracts and subcontracts.

Classification of a Procurement for Supplies

SBA's regulations provide that acquisitions for supplies must be classified under the appropriate manufacturing NAICS code, not under a wholesale trade NAICS code. The proposed rule amended the size regulations to clarify that a procurement for supplies also cannot be classified under a retail trade NAICS code. SBA received seven comments supporting and three comments opposing this proposed change. SBA continues to believe that procurements for supplies should be classified under the appropriate manufacturing or other supply NAICS code. The retail trade NAICS code is appropriate for financial assistance (*e.g.,* loans), but not for the procurement of specified supply items. As such, SBA does not change this provision in the final rule.

Application of the Nonmanufacturer Rule

The proposed rule also attempted to provide further guidance to the current nonmanufacturer rule (*i.e.,* the rule that requires, in pertinent part, a firm that is not itself the manufacturer of the end item being procured to provide the product of a small business manufacturer). The proposed rule explicitly provided that the nonmanufacturer rule applies only where the procuring agency has classified a procurement as a manufacturing procurement by assigning the procurement a NAICS code under Sectors 31–33.

In addition, the proposed rule clarified that the nonmanufacturer rule applies only to the manufacturing or supply component of a manufacturing procurement. Where a procuring agency has classified a procurement as a manufacturing procurement and is also acquiring services, the nonmanufacturer rule would apply to the supply component of that procurement only. In other words, a firm seeking to qualify as a small business nonmanufacturer must supply the product of a small business manufacturer (unless a nonmanufacturer waiver applies), but need not perform any specific portion of the accompanying services. Since the procurement is classified under a manufacturing NAICS code, it cannot also be considered a services procurement and, thus, the 50% performance of work requirement set forth in § 125.6 for services does not apply to that procurement. In classifying the procurement as a manufacturing/supply procurement, the procuring agency must have determined that the "principal nature" of the procurement was supplies. As a result, any work done by a subcontractor on the services portion of the contract cannot rise to the level of being "primary and vital" requirements of the procurement, and therefore cannot be the basis or affiliation as an ostensible subcontractor. Conversely, if a procuring agency determines that the "principal nature" of the procurement is services, only the requirements relating to services contracts apply. The nonmanufacturer rule, which applies only to manufacturing/supply contracts, would not apply. Thus, although a firm seeking to qualify as a small business with respect to such a contract must certify that it will perform at least 50% of the cost of the contract incurred for personnel with its own employees, it need not supply the product of a small business manufacturer on the supply component of the contract.

In order to qualify as a nonmanufacturer, a firm must be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied. The proposed rule further defined this statutory requirement to mean that the firm takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice. This change is primarily in response to

situations where SBA has waived the nonmanufacturer rule and the prime contractor essentially subcontracts all services, such as warehousing or delivery, to a large business. Such an arrangement, where the prime contractor can legally provide the product of a large business and then subcontract all tangential services to a large business, is contrary to the intent and purpose of the Small Business Act, *i.e.,* providing small businesses with an opportunity to perform prime contracts. Such an arrangement inflates the cost to the Government of contract performance and inflates the statistics for prime contracting dollars awarded to small business, which is detrimental to other small businesses that are willing and able to perform Government contracts.

In response to the proposed changes to the nonmanufacturer rule, 12 commenters addressed the proposal to require a nonmanufacturer to take possession of the items with its own facilities, equipment or personnel in a manner consistent with industry practice. Eight commenters supported the change, while four opposed it. Those in opposition believed that the change would limit opportunities for small businesses. Two commenters also stated that taking possession of supply items is not consistent with industry practices. Those supporting the change believed that it was a reasonable requirement to ensure that small business nonmanufacturers were providing some value to the procurement other than their status as small or small 8(a) businesses. These commenters particularly thought that the proposal made sense in the scenario outlined in the **SUPPLEMENTARY INFORMATION** for the proposed rule, where there are no small business manufacturers available for the contract (and either a class or individual waiver to the nonmanufacturer rule is granted). In such a case, small business participation is minimal, yet the entire value of the contract is counted as an award to small business for goaling purposes. In response to these comments, SBA first notes that the proposed rule did not require a small business nonmanufacturer to take possession of the supply items in every case. It required that the nonmanufacturer take ownership *or* possession. If the nonmanufacturer arranged for transportation of the supply items (*e.g.,* it uses trucks it owns or leases to transport the items to the final destination), then it need not take ownership of the supply items. If it does not arrange for the transportation, then it must at least take ownership of the supply items. SBA recognizes the validity of small business dealers and does not seek to harm legitimate small business dealers. SBA continues to believe, however, that the ownership or possession requirement provides a necessary safeguard to abuse. A multi-million dollar supply contract in which a large business manufacturer provides the supply items directly to the Government procuring agency and the small business nonmanufacturer provides nothing more than its status as a small business does not foster small business development. As such, this provision is not changed in the final rule.

One commenter disagreed with the proposal to limit application of the nonmanufacturer rule to acquisitions that have been classified with a manufacturing NAICS code. The commenter argued that some supply contracts cannot be classified as manufacturing. We agree. Thus, we have removed this requirement from the final rule. The commenter further argued that SBA should allow procuring agencies to assign wholesale NAICS codes to procurements because not all supply contracts can be classified under a manufacturing or supply NAICS code. We disagree. First, the Small Business Act and SBA's regulation do not contain performance requirements applicable to wholesale or retail contracts. Thus, wholesale and retail NAICS codes cannot be used for government procurement purposes. The wholesale and retail trade NAICS codes are for purposes of SBA financial assistance only. Second, a contracting officer should assign the NAICS code to a procurement which best describes the principal purpose of the acquisition. While some procurements call for the provision of supplies and services, a procurement should be classified as one or the other, and cannot be classified as both. The classification dictates what an offeror must perform in order to qualify as a small business concern for a small set aside procurement. These limitations on subcontracting performance requirements vary depending on whether the contract is classified as a service, supply, construction or specialty trade construction procurement. If a contract is classified as a service contract, then only the requirements pertaining to service contracts apply. There is no requirement that the ultimate contractor meet any performance of work requirements relating to the manufacture of products, which may be ancillary to the services contract. The relevant consideration is the cost of the contract incurred for personnel. If a contract is classified as a supply contract, then only the requirements pertaining to supply contracts apply. The concern must either be the manufacturer of the items being procured or be a dealer that supplies the products of a small business manufacturer (unless a waiver to the nonmanufacturer rule applies), and there is no requirement that the concern provide any ancillary services. The relevant consideration is the cost of manufacturing the supplies or products. In the acquisition described by the commenter, for the delivery of fruits and vegetables, if a manufacturing or supply NAICS code is not appropriate then the procurement should be classified under a warehousing or delivery service NAICS code. In response to this comment, the final rule also clarifies that a waiver of the nonmanufacturer rule does not waive the requirement that a nonmanufacturer not exceed the 500 employee size standard or the requirement that the nonmanufacturer must take ownership or possession of the items with its personnel, equipment or facilities. A waiver of the nonmanufacturer rule only applies to the requirement that a nonmanufacturer supply a product of a small business concern made in the United States.

Finally, one commenter recommended that § 121.406 specifically reference the service disabled veteran-owned (SDVO) program as a program to which the nonmanufacturer rule applies. Section 125.15(c) currently states that the nonmanufacturer rule applies to SDVO requirements for supplies. Thus, although it is not necessary to also add that requirement to § 121.406 of the size regulations, this final rule has done so in order to provide more clarity regarding the rule's application. Similarly, the final rule also clarifies in § 121.406 that the nonmanufacturer rule applies to women-owned small business (WOSB) and economically disadvantaged women-owned small business (EDSOB) requirements for supplies. Again, § 127.505 of SBA's regulations currently states that the nonmanufacturer rule applies to WOSB and EDWOSB requirements for supplies, but it is added to § 121.406 as well for clarity purposes.

Request for Formal Size Determination

The proposed rule also amended § 121.1001(b) to give the SBA's OIG the authority to ask for a formal size determination. Because the OIG is not currently listed in the regulations as an individual who can request a formal size determination, the OIG must currently seek a formal size

determination through the relevant SBA program office. SBA believes that the Inspector General should be able to seek a formal size determination when questions about a concern's size arise in the context of an investigation or other review of SBA programs by the Office of Inspector General. SBA received several comments regarding the proposed change to allow the SBA's OIG to ask for formal size determinations. All but one commenter supported the change. The dissenting commenter believed that the change is unnecessary and would give the OIG too much power. SBA believes that it is reasonable for the OIG to be able to request a formal size determination where it deems it to be appropriate, and, thus, has not changed this provision in this final rule.

Part 124

Because the primary focus of the October 28th proposed rule was to comprehensively revise the regulations relating to the SBA's 8(a) BD program, the vast majority of the comments SBA received pertained to proposed changes to part 124. SBA will address each of the substantive comments made regarding proposed changes to part 124 in turn.

Completion of Program Term

The proposed rule clarified that every firm that completes its nine-year program term will not be deemed to "graduate" from the 8(a) BD program. Pursuant to the Small Business Act, a Participant is considered to graduate only if it successfully completes the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan, thereby demonstrating its ability to compete in the marketplace without 8(a) assistance. 15 U.S.C. 636(j)(10)(H). After nine years in the program, a firm will be deemed to graduate only where SBA determines that is has substantially achieved the targets, objectives and goals set forth in its business plan. Where those targets, objectives and goals have not been substantially achieved, the firm will merely be deemed to have completed its nine-year program term. The proposed rule made changes to §§ 124.2, 124.301 and 124.302 to effect this change. In addition, the proposed rule added a new § 124.112(f) to require SBA to determine if a firm should be deemed to have graduated from the 8(a) BD program at the end of its nine-year program term or to merely have completed its program term. As part of the final annual review performed by SBA prior to the expiration of a Participant's nine-year program term, SBA will determine whether the firm has met the targets, objectives and goals set forth in its business plan and whether it has "graduated" from the program.

Several commenters voiced support for the clarification to distinguish between graduation and completion of a firm's program term, but did not provide reasoning for their support. Other commenters misinterpreted the purpose of the proposed change, believing that SBA intended to extend the program term beyond nine years. This conclusion was incorrect. A few commenters recommended extending the program term beyond nine years. That is something SBA cannot do. The Small Business Act specifically restricts the maximum amount of time a firm may participate in the BD program to nine years; no more than four years in the developmental stage and no more than five years in the transitional stage. *See* 15 U.S.C. 636(j)(15). As such, SBA is precluded by statute from extending a firm's participation in the program beyond nine years, and the nine-year program term remains in this final rule. The final rule also retains the proposed language pertaining to graduation and program term completion with minor changes in wording.

Finally, two commenters recommended that the nine-year program term begin on the date that a firm receives its first 8(a) contract award, stating that many firms are in the 8(a) BD program for four, five or more years before receiving their first 8(a) contract, and believing that true business development does not begin until contractual assistance is received. Again, the Small Business Act prevents such a change. Specifically, the Act states that a firm cannot participate in the 8(a) BD program "for a total period of not longer than nine years, measured from the date of its certification" into the 8(a) BD program. 15 U.S.C. 636(j)(15). Thus, SBA does not have the discretion to change the date upon which the nine-year program term begins to run.

Definitional Changes

The proposed rule amended § 124.3, to add a definition of NAICS code. It also proposed to change the term "SIC code" to "NAICS code" everywhere it appears in part 124 to take into account the replacement of the Standard Industry Classification (SIC) code system with the North American Industry Classification System. Commenters applauded SBA changing the references in the 8(a) BD regulations from SIC codes to NAICS codes, believing it was long overdue and would eliminate any confusion to those new to the Government contracting arena. Specifically, in this final rule, the term "NAICS code" replaces the term "SIC code" in §§ 124.110(c), 124.111(d), 124.502(c)(3), 124.503(b), 124.503(b)(1), 124.503(b)(2), 124.503(c)(1)(iii), 124.503(g)(3), 124.505(a)(3), 124.507(b)(2)(i), 124.513(b)(1), 124.513(b)(1)(i), 124.513(b)(1)(ii)(A), 124.513(b)(2), 124.513(b)(3), 124.514(a)(1), 124.515(d), 124.517(d)(1), 124.517(d)(2), 124.519(a)(1), 124.519(a)(2), 124.1002(b)(1), 124.1002(b)(1)(i), 124.1002(b)(1)(ii), and 124.1002(f)(3).

The proposed rule also amended the definition of primary industry classification to specifically recognize that a Participant may change its primary industry classification over time. Specifically, the proposed rule authorized a firm to change its primary NAICS code by demonstrating that the majority of its revenues during a two-year period have evolved from its former primary NAICS code to another NAICS code. The vast majority of comments supported the proposed change. One commenter recommended that the language be changed from "SBA may permit" a change in a firm's primary industry classification to "SBA shall permit" to make it clear that no criteria other than a demonstration that the source of a firm's revenues has changed from one NAICS code to another is required for SBA to recognize such a NAICS code change. A few other commenters suggested that SBA should define the term "majority of its revenues" and describe specifically SBA's analysis and the process by which a firm can demonstrate that the "majority of its revenues" have evolved from one NAICS code to another. One commenter opposed the proposed language believing that a firm should be able to change its primary NAICS code at any time without any demonstration to SBA as it is a business decision for the concern.

SBA agrees that the wording of the provision should be clarified to make it clear that a primary industry classification change is entirely within the control of a Participant. If the Participant can show that the majority of the revenues that it has received have changed from one NAICS code to another, that is all that is needed. SBA will not look at any other factors. SBA does not believe, however, that a firm can independently deem that its primary NAICS code has changed without providing any support to demonstrate that the work that it performs (and thus the firm's primary industry classification) has in fact changed over time. Thus, the final rule clarifies that SBA will look only at a

firm's total revenues. SBA intended that the majority of a firm's revenues means that NAICS code accounting for the largest amount of all of its revenues from whatever source. If the firm performs work only in two NAICS codes, then a majority would mean at least 51% of its revenues. If a firm performs work in more than two NAICS codes, the new primary industry would be that NAICS code accounting for the most dollars. For example, if a firm comes into the program with a primary industry classification in NAICS code X, but also does work in NAICS codes Y and Z, and over time its revenues change so that for the last two years it has 40% of its revenues in NAICS code Y, 30% in NAICS code X and 30% in NAICS code Z, then its primary industry would change to NAICS code Y. That interpretation is consistent with how SBA defines "revenues" for size purposes (*i.e.,* to specifically include all receipts from whatever source). As such, SBA does not believe that further clarification of that term is required.

In addition, one commenter was concerned that only the Participant should be able to initiate a primary NAICS code change, and did not believe that SBA should be able to force such a change on its own initiative. It was never SBA's intent that SBA would be able to change a firm's primary NAICS code on its own. However, SBA does not believe that a change is needed to the regulations since § 124.112(e) recognizes only the right of a Participant to request a change in primary industry classification.

The proposed rule also added a definition of the term "regularly maintains an office." This definition is important in determining whether a Participant has a bona fide place of business in a particular geographic location. The proposed rule took this definition from current SBA policy contained in SBA's Standard Operating Procedures. Several commenters supported this change. In particular, commenters supported the clarification contained in the supplementary information that although a firm would generally be required to have a license to do business in a particular location in order to "regularly maintain an office" there, the firm would not be required to have a construction license or other specific type of license in order to regularly maintain an office and thus have a bona fide place of business in a specific location. One commenter recommended that this clarification be included in the actual regulatory text. SBA agrees and has made that change in this final rule.

Fees for Applicant and Participant Representatives

SBA has permitted firms applying to the 8(a) program and Participants in the program seeking contracts to hire agents or representatives to assist them in that process. In response to concerns that SBA's policy is not set forth in the regulations, this final rule adds a new § 124.4 to address fees for agents and representatives. The final rule provides that the compensation received by any agent or representative of an 8(a) applicant or Participant for assisting the applicant in obtaining 8(a) certification or for assisting the Participant in obtaining 8(a) contracts must be reasonable in light of the service(s) performed by the agent or representative. The rule captures SBA's current policy and responds to concerns raised that some applicants and Participants have paid unreasonable amounts to representatives. In particular, several commenters believed that some representatives have obtained compensation that has been a percentage of gross contract value, that unsophisticated 8(a) firms may not have fully understood what fee they were agreeing to, and that such a fee is unreasonable. In response, the final rule provides that the compensation received by any agent or representative assisting the 8(a) firm, both at time of application or any other assistance to support program participation, must be reasonable. Compensation that is a percentage of the gross contract value will be prohibited. Additionally, compensation that is a percentage of profits may be found to be unreasonable. The final rule sets out procedures by which SBA will suspend or revoke an agent's or representative's privilege to assist applicants. SBA's authority to suspend or revoke an agent's or representative's privileges is already contained in § 103.4 and is included here for purposes of ease and clarity.

Residence in the United States

Under the basic requirements a firm must meet in order to be eligible for the 8(a) BD program, the proposed rule added a provision to § 124.101 requiring individuals claiming social and economic disadvantage status to reside in the United States. SBA received four comments to this proposed change. All four supported the change thinking that such a requirement is reasonable in light of the benefits afforded through the program. As such, this provision remains unchanged in the final rule.

Size for Primary NAICS Code

The proposed rule sought to amend § 124.102(a) to require that a firm remain small for its primary NAICS code during its term of participation in the 8(a) BD program, and correspondingly sought to revise § 124.302 to permit SBA to graduate a Participant prior to the expiration of its program term where the firm exceeds the size standard corresponding to its primary NAICS code for two successive program years. SBA received numerous comments to this proposed change which were overwhelmingly opposed to the proposed change.

Several commenters believed that looking at a firm's size over a two year period was inconsistent with the Agency's size regulations, which determines size for a firm with a revenue-based primary NAICS code over a three year period. Other commenters questioned the purpose and wisdom of this entire provision, believing that the natural progression of many small businesses necessarily leads them into various business opportunities and SBA should not inhibit firms' growth. They argued that the proposed change would have a chilling effect on the growth of small businesses and in essence penalized firms for succeeding in the program.

The 8(a) program is a business development program designed to assist Participant firms advance toward competitive viability. Where a firm has grown to be other than small in its primary NAICS code, SBA believes that the program has been successful and it is reasonable to conclude that the firm has achieved the goals and objectives of its business plan. Because the Small Business Act authorizes early graduation where a firm has met the targets, goals and objectives set forth in its business plan, SBA believes that growing to other than small in a firm's primary industry classification similarly warrants consideration of early graduation. The program would resemble a contracting program more than a business development program where a firm is permitted to remain in the program after it has grown to be other than small in its primary NAICS code and be able to shop for contracting opportunities in NAICS codes having accompanying larger size standards. A firm that is other than small in its primary NAICS code is, and has always been, ineligible to be admitted to the 8(a) BD program. That being the case, SBA believes that it follows that a firm that grows to exceed its primary NAICS code once in the 8(a) BD program and does not intend to change its primary

NAICS code may no longer need the business development assistance the program provides and should be early graduated from the program. SBA recognizes, however, that it would be unfair to early graduate a firm from the 8(a) BD program where it has one very successful program year that may not again be repeated. In response to the comments received, the final rule changes the number of years that a Participant must exceed its primary NAICS code before SBA will consider early graduation from two years (as proposed) to three years. Additionally, in response to the many comments received regarding this provision, the rule allows a firm to demonstrate that it has made attempts and continues to move to one of the secondary NAICS codes identified in its business plan and that it will change the primary NAICS code accordingly. This will more closely align to the way SBA determines size under § 121.104.

This provision is not meant to conflict with the change made to the definition of primary industry classification in § 124.3 that permits a Participant to change its primary NAICS code during its participation in the 8(a) BD program. Where a firm demonstrates that it has changed its primary NAICS code, SBA would consider early graduation only where the Participant exceeds the size standard corresponding to its new primary NAICS code for three successive program years.

Definition of American Indian

A few commenters asked for clarification of the term "American Indian" in § 124.103. Section 124.103(b) includes Native Americans as individuals who are presumptively socially disadvantaged. The previous regulatory provision defined Native Americans to be "American Indians, Eskimos, Aleuts, or Native Hawaiians." This final rule clarifies that an individual must be an enrolled member of a Federally or State recognized Indian Tribe in order to be considered an American Indian for purposes of presumptive social disadvantage. This definition is consistent with the majority of other Federal programs defining the term Indian. An individual who is not an enrolled member of a Federally or State recognized Indian Tribe will not receive the presumption of social disadvantage as an American Indian. Nevertheless, if that individual has been identified as an American Indian, he or she may establish his or her individual social disadvantage by a preponderance of the evidence, and be admitted to the 8(a) BD program on that basis. In addition, the rule inserts the words "Alaska Native" to take the place of Eskimos and Aleuts.

Economic Disadvantage

SBA proposed several revisions to § 124.104 *Who is Economically Disadvantaged?,* including: A clarification regarding how community property laws affect an individual's economic disadvantage; adding a provision to exempt certain Individual Retirement Accounts (IRAs) from SBA's net worth calculation; clarifications relating to S corporations; and adding objective standards by which an individual can qualify as economically disadvantaged based on his or her income and total assets. SBA received a substantial number of comments regarding these proposed changes. Overall, the comments to the proposed changes supported the revisions. However, several commenters opposed the requirement that individuals remain economically disadvantaged after their admission into and throughout their participation in the 8(a) BD program. SBA believes that the Small Business Act requires individuals upon whom program eligibility is based to remain economically disadvantaged throughout the program term of the Participant firm. Specifically, the Small Business Act authorizes firms owned and controlled by socially and economically disadvantaged individuals to be eligible for the program. Where one of these underlying requirements is not met (*e.g.,* the individual owners no longer qualify as economically disadvantaged), the firm ceases to be eligible for the program. Several other commenters recommended that net worth, personal income and total asset standards should vary either by industry or geographically. SBA believes that any such change would require additional public comment and could not be made final in this rule. As such, SBA has not addressed these comments in this rule, but will consider them for a possible future proposed rulemaking. The specific comments regarding economic disadvantage are addressed below.

A few commenters addressed the proposed change to add a sentence to paragraph (b)(2) to clarify that SBA does not take community property laws into account when determining economic disadvantage. Those that did generally supported the change. Pursuant to the change, property that is legally in the name of one spouse would be considered wholly that spouse's property, whether or not the couple lived in a community property state. This policy also results in equal treatment for applicants in community and non-community property states. Community property laws will continue to be applied in § 124.105(k) for purposes of determining ownership of an applicant or Participant firm, but they will not be applied for any other purpose.

Several commenters expressed concern with the proposed amendment to paragraph (b)(2) that would allow SBA to consider a spouse's financial situation in determining an individual's access to capital and credit. The commenters suggested that a spouse's finances should be reviewed only if the spouse is active in the business or lending money to the company. This was particularly true of individuals who intentionally have kept separate finances from their spouses. They felt that the proposed rule did not look at their individual economic disadvantage status as required by the Small Business Act, but rather at their joint economic condition with their spouses. Several commenters suggested that SBA should clarify the limited circumstances when SBA will consider the financial situation of a socially disadvantaged owner's spouse. After careful review, SBA has determined that a spouse's financial condition should not be attributed to the individual claiming disadvantaged status in every case. Instead, SBA will consider a spouse's financial condition only when the spouse has a role in the business (*e.g.,* an officer, employee or director) or has lent money to, provided credit support to, or guaranteed a loan of the business.

Several commenters believed that the provision requiring SBA to consider the financial condition of the applicant compared to the financial profiles of small businesses in the same industry which are not owned by socially and economically disadvantaged individuals confused personal economic disadvantage with the applicant firm's potential for success. They believed that the applicant firm's financial condition was already considered under the potential for success requirement and that it has no relationship as to whether an individual qualifies as economically disadvantaged. SBA believes that the financial condition of the applicant firm could have a bearing on whether an individual is considered to have access to credit and capital, but understands the confusion noted by the commenters. To eliminate any confusion and because SBA already reviews the financial condition of the applicant as part of its potential for success determination, this rule deletes from an individual's personal economic disadvantage review the requirement that SBA compare the financial condition of the applicant to

that of non-disadvantaged small businesses.

SBA's proposed treatment of income from an S corporation and exclusion of IRAs from an individual's net worth determination in paragraph (c)(2) received wide support. Several commenters suggested that all IRA accounts should be excluded from the net worth calculation whether there is a penalty or not. SBA continues to believe, however, that the presence of a penalty with a retirement account will lessen the potential for abuse of this provision. Individuals will be less likely to attempt to hide current assets in funds labeled "retirement accounts" when there is a substantial penalty for accessing the account. A significant penalty would be one equal or similar to the penalty assessed by the Internal Revenue Service (IRS) for early withdrawal. Although, as one commenter notes, it is true that the practical effect of the rule may treat older individuals differently than younger individuals because individuals of a certain age will not incur a penalty with a withdrawal, SBA believes that any account that may be accessed immediately without a penalty must be treated as a present asset and included within an individual's net worth determination. If an individual invests funds from a retirement account into the participant concern, those funds would be excluded from the net worth analysis as part of the exclusion of business equity even where there was not a significant penalty for access to the "retirement" funds prior to the investment in the business. The applicant may be required to submit evidence that the funds were invested into the participant concern.

One commenter suggested Participants should be required to submit retirement account statements when applying for 8(a) certification and filing their 8(a) status updates, and the Participants should have to certify that the funds remain in "legitimate" retirement accounts. SBA agrees that some verification of retirement account information should be required. As such, the final rule provides that in order for SBA to determine whether funds invested in a specific account labeled a "retirement account" may be excluded from an individual's net worth calculation, the individual must provide to SBA information about the terms and conditions of the account and certify in writing that the "retirement account" is legitimate.

SBA also proposed an amendment to paragraph (c)(2) to exempt income earned from an S Corporation from the calculation of both an individual's income and net worth to the extent such income is reinvested in the firm or used to pay taxes arising from the normal course of operations of an S corporation. This change will result in equal treatment of corporate income for C and S corporations. Most commenters applauded SBA's consideration of the tax treatment for S corporations. A few commenters believed that the clarification contained in the supplementary information that S corporation losses are losses to the company only, and not losses to the individual, should be specifically set forth in the regulatory text to clear up confusion on this issue. SBA agrees and has included that clarification in this final rule. In addition, the final rule has clarified that the treatment of S corporation income applies to both determinations of an individual's net worth and personal income. Several commenters also recommended that Limited Liability Companies (LLCs) and other pass-through entities be treated the same way as S corporations for purposes of an individual's net worth and personal income. SBA agrees. S corporations, LLCs and partnerships should all be treated similarly since all pass income through to the individual owners/members/partners.

The proposed rule added a new § 124.104(c)(3) to provide that SBA would presume that an individual is not economically disadvantaged if his or her adjusted gross income averaged over the past two years exceeds $200,000 for initial 8(a) BD eligibility and $250,000 for continued 8(a) BD eligibility. SBA received numerous comments on the proposed change to income thresholds. Several commenters opposed any objective thresholds; others recognized the precedential case law of SBA's Office of Hearings and Appeals (OHA) and supported the inclusion of standards in the regulations for clarity purposes. Still others suggested alternative methodologies, including comparing income to W–2 data, as opposed to adjusted gross income (AGI), or comparing industry data and similarly situated business owners. SBA considered the alternate approaches and has determined that a set threshold amount is consistent with the requirements of determining economic disadvantage and is not only a fair and reasonable approach, but is one that is easily understandable by all potential applicants. As noted, the proposed rule established $200,000 as the amount of personal income below which an individual would be considered economically disadvantaged for initial 8(a) BD eligibility. In formulating what the personal income threshold should be, the supplementary information to the proposed rule explained that SBA considered statistical data from the IRS. The $200,000 figure closely approximated the income level corresponding to the top two percent of all wage earners, which has been upheld by OHA as a reasonable indicator of a lack of economic disadvantage. Since SBA published its proposed rule, the IRS has released new statistical data pertaining to high income wage earners in the United States. The current IRS statistical data on wage earners in the United States shows individuals earning an AGI of approximately $260,000 fall in the top two percentile of all wage earners. Accordingly, SBA believes that the personal income threshold should be adjusted upward to align more closely with the new IRS statistical data. As such, this final rule has adjusted the personal income threshold amount to $250,000. Although a $250,000 personal income threshold may seem high, SBA notes that this amount is being used only to presume, without further information, that the individual is or is not economically disadvantaged. SBA may consider an income lower than $250,000 as indicative of lack of economic disadvantage in appropriate circumstances. SBA also notes that the average income for a small business owner is generally higher than the average income for the population at large and, therefore, what appears to be a high benchmark is merely reflective of the small business community. In all cases, SBA's determination is based on the totality of the circumstances.

The final rule establishes a three year average income level of $350,000 for continued 8(a) BD program eligibility. Considering the new IRS statistical data and the threshold established for initial 8(a) BD eligibility, the $250,000 proposed figure for continued 8(a) BD eligibility was inappropriate. It seems obvious to SBA that as a firm becomes more developed and sophisticated, the income levels for its owners and managers will most often increase. Increasing the personal income threshold for continued 8(a) BD eligibility to $350,000 will allow the Participant to attract and retain higher skilled employees, since the disadvantaged owner/manager must be the highest compensated individual in the firm, with limited exceptions. This will enable the Participant to more fully develop, thereby further serving the purposes of the 8(a) BD program.

Several commenters also recommended that the snapshot that SBA looks at for determining whether an individual's personal income

exceeds the applicable standard should be three years instead of two years. These commenters noted that income for a small business owner is not constant and could fluctuate dramatically in volatile economic times. They argued that a small business could have two very good years, provide higher incomes to its owners during those two years, and be deemed ineligible for future 8(a) BD participation because of the income given. They believed such a result was unfair, particularly when the two good years were followed by several bad years. One commenter also pointed to the three year average annual receipts review for purposes of determining a firm's size for receipts-based size standards and felt that personal income should similarly be evaluated over a three year period. SBA believes these comments are valid and has adjusted the evaluation period to three years in the final rule. However, SBA does not seek to make it more difficult for firms that have already applied to the 8(a) BD program before the date this final rule is published. As such, firms that have applied to the 8(a) BD program prior to the date of publication of this final rule may elect to have their applications continued to be processed based on two years personal income data instead of three years and would not be required to submit additional information relating to a third year's personal income. If any such firms would like to have their applications evaluated based on three years personal income data instead of two years, they must notify SBA within 30 days after the date of publication of this final rule in the **Federal Register**.

The final rule continues to permit applicants to rebut the presumption of lack of economic disadvantage upon a showing that the income is not indicative of lack of economic disadvantage. For example, the presumption could be rebutted by a showing that the income was unusual (inheritance) and is unlikely to occur again or that the earnings were offset by losses as in the case of winnings and losses from gambling resulting in a net gain far less than the actual income received. SBA may still consider any unusual earnings or windfalls as part of its review of total assets. Thus, although an inheritance of $6 million, for example, may be unusual income and excluded from SBA's determination of economic disadvantage based on income, it would not be excluded from SBA's determination of economic disadvantage based on total assets. In such a case, a $6 million inheritance would render the individual not economically disadvantaged based on total assets.

The proposed rule also sought to amend § 124.104(c) to establish an objective standard by which an individual can qualify as economically disadvantaged based on his or her total assets. The regulations have historically authorized SBA to use total assets as a basis for determining economic disadvantage, but did not identify a specific level below which an individual would be considered disadvantaged. The regulations also did not spell out a specific level of total assets above which an individual would not qualify as economically disadvantaged. Although SBA has used total assets as a basis for denying an individual participation in the 8(a) BD program based on a lack of economic disadvantage, the precise level at which an individual no longer qualifies as economically disadvantaged was not certain. The proposed rule established $3 million in total assets as the standard for initial 8(a) BD eligibility and $4 million in total assets as the standard for continued 8(a) BD eligibility. SBA based these standards on OHA cases supporting SBA's determination that an individual was not economically disadvantaged with total asset levels of $4.1 million and $4.6 million. *See Matter of Pride Technologies,* SBA No. 557 (1996), and *SRS Technologies* v. *U.S.,* 843 F. Supp. 740 (D.D.C. 1994). Several commenters believed that both of these proposed standards were too low. Because the value of the applicant or Participant concern is included within the total assets standard, several commenters believed that the proposed standards contradicted the business development purposes of the 8(a) BD program. One commenter wondered whether SBA intended that only less developed firms be admitted to the 8(a) BD program because a $3 million total asset standard that included the value of the applicant firm would not permit applicants which had been successful prior to the date of application. Other commenters questioned how firms could truly develop in the 8(a) BD program if their value could increase only $1 million during the course of nine years because to increase in value by more than $1 million could cause the individuals upon whom eligibility was based to no longer be considered economically disadvantaged. Similarly, several commenters felt that the proposed total asset standards would have a chilling effect on business growth because they would discourage reinvestment into the firm. SBA understands these concerns. It was never SBA's intent to limit in any way an 8(a) firm's ability to fully develop its business during its participation in the 8(a) BD program. First, considering that the personal income standards have been increased in this final rule, SBA believes that it makes sense to also increase the total assets standards. In addition, to dismiss any concern that the proposed standards would have hindered Participants' business development during their nine years in the 8(a) BD program, this final rule allows the total assets of a disadvantaged individual to increase by more than $1 million during the firm's participation in the program. Thus, pursuant to this final rule, an individual will not be considered economically disadvantaged if the fair market value of all his or her assets exceeds $4 million at the time of 8(a) application and $6 million for purposes of continued 8(a) BD program participation. This means that SBA will presume that an individual does not qualify as economically disadvantaged if the fair market value of all his or her assets is $4 million and one dollars for initial eligibility and $6 million and one dollars for purposes of continuing eligibility. Unlike the net worth analysis, SBA does not exclude the fair market value of the primary residence or the value of the applicant/participant concern in determining economic disadvantage in the total asset analysis. The only assets excluded from this determination are funds invested in a qualified IRA account.

Changes to Ownership Requirements

SBA proposed two amendments to the ownership requirements for 8(a) BD participation. First, SBA proposed to amend § 124.105(g) to provide more flexibility in determining whether to admit to the 8(a) BD program companies owned by individuals where such individuals have immediate family members who are owners of current or former 8(a) concerns. Second, SBA also proposed to amend § 124.105(h)(2) to add the words "or a principal of such firm" which were inadvertently omitted from the previous regulations. SBA received 29 comments to the proposed changes in this section. All of the comments received pertained to the immediate family member issue, and SBA received no comments on correcting the inadvertent omission. As such, SBA adopts the language as proposed for § 124.105(h)(2) without any change, and addresses the specific comments regarding § 124.105(g).

Prior to any change, the language of § 124.105(g) provided that "the

individuals determined to be disadvantaged for purposes of one Participant, their immediate family members, and the Participant itself, may not hold, in the aggregate, more than a 20 percent equity ownership interest in any other single Participant." Because of the wording of that provision, SBA was forced to deny 8(a) program admission to companies solely because the owners of those firms had family members who were disadvantaged owners of other 8(a) concerns. In some cases, the two firms were in different industries and located in different parts of the country. SBA thought that that language was too restrictive and attempted to allow some flexibility in the proposed rule.

The majority of those commenting on this section supported the increased flexibility for firms owned by immediate family members set forth in the proposed rule. A few commenters believed that the proposed language was still too restrictive, while others thought that immediate family members of a disadvantaged individual in one 8(a) firm should never be allowed to qualify a second firm for 8(a) participation. SBA continues to believe that it serves no purpose to automatically disqualify a firm simply because the individual seeking to qualify the firm has an immediate family member already participating in the program. There are some cases where it is clear that an absolute ban on an immediate family member owning a second 8(a) Participant is inappropriate. For example, if one sibling lives in California and one sibling lives in New York and they each operate a business in different industries, it makes no sense not to allow the second firm to participate in the 8(a) BD program. In such a case, there is no likelihood that the current or graduated 8(a) firm is seeking to prolong its participation in the 8(a) BD program through the second firm. Although there may be situations in which SBA chooses to deny admission to a firm based on a family member's program participation, such a decision will be made on a case-by-case basis.

Several commenters recommended that SBA should allow immediate family members to qualify independent businesses for 8(a) participation provided the family members do not live in the same household. SBA does not believe that the recommended restriction goes far enough. SBA has a legitimate interest in preventing disadvantaged individuals from using family members to extend their program terms by creating fronts whereby a disadvantaged individual controls and operates a second firm owned by an immediate family member. This control can occur whether or not the two family members are living in the same household. SBA believes that the restriction contained in the proposed rule, that an immediate family member of a current or former 8(a) firm can qualify a second firm for the 8(a) BD program where there are no or negligible connections between the two firms and he or she can demonstrate sufficient management and technical experience to independently operate the firm, is a more appropriate approach. If there are in fact connections between the two firms or if the individual claiming disadvantaged status for the second firm does not possess sufficient management and technical experience to operate the firm, the firm would be ineligible for 8(a) participation whether or not the two family members live in the same household. SBA also believes that the narrow exception to the general prohibition against family members owning 8(a) concerns in the same or similar line of business contained in the proposed rule will permit the Agency sufficient flexibility to admit firms where they are clearly operating separately and independently from the relative's firm. As such, this final rule does not alter the language contained in the proposed rule regarding participation by immediate family members.

Changes to Control Requirements

The proposed rule amended three provisions pertaining to the control requirements set forth in § 124.106 for 8(a) applicants and Participants. First, it added an additional requirement that the disadvantaged manager of an 8(a) applicant or Participant must reside in the United States and spend part of every month physically present at the primary offices of the applicant or Participant. Second, it clarified that control restrictions applying to non-disadvantaged managers, officers and directors applied to all non-disadvantaged individuals in an applicant or Participant firm. Third, it added a new § 124.106(h) to address control of an 8(a) Participant where a disadvantaged individual upon whom eligibility is based is called up to active duty in the United States military. SBA received over 40 comments relating to the proposed changes to § 124.106. We will address the comments relating to each proposed provision in turn.

SBA received 35 comments in response to the proposed amendment to § 124.106(a)(2). The comments identified two issues: residence in the United States, and physical presence by the disadvantaged manager at the firm for some portion of each month. Most commenters agreed that it makes sense to require a full-time disadvantaged manager of an 8(a) applicant or Participant to be physically located in the United States. Commenters noted that the program is intended to assist disadvantaged businesses develop in the United States and that it was a reasonable requirement to require one or more disadvantaged managers to reside in the United States as well. However, many commenters disagreed with the requirement that a disadvantaged manager must spend part of every month physically present at the primary offices of the applicant or Participant. They felt that some sort of minimum or nominal presence was arbitrary and meaningless. Commenters also agreed with the statements made in supplementary information to the proposed rule that new and improved technologies enable managers to maintain control over the operations of their businesses without the need for a constant or consistent physical presence. They believed that individual managers who are not physically present should be required to demonstrate that they control the day-to-day operations of the firm, but that such demonstration should be on a case-by-case basis and should not be tied to any specific hourly presence requirement at the headquarters or principal office of the firm. After considering the comments, SBA believes that the best approach is to determine day-to-day control on a case-by-case basis. As such, this final rule retains the requirement that the disadvantaged manager of an 8(a) applicant or Participant must reside in the United States, but eliminates the added requirement that he or she must also spend part of every month physically present at the primary offices of the applicant or Participant. One commenter recommended that SBA more clearly define what it means to "reside" in the United States. Specifically, the commenter questioned whether physical presence was required or whether an individual who lives in another country but files taxes and votes in the United States could satisfy this requirement. In order to eliminate any assertion that an individual "resides" in the United States because he or she has maintained a residence in the United States despite living in another country, the final rule clarifies that a disadvantaged manager must be physically located in the United States.

SBA received no comments to the proposed change to § 124.106(e), clarifying that restrictions imposed on

non-disadvantaged managers apply to all non-disadvantaged individuals. As such, the final rule adopts the language contained in the proposed rule.

Proposed § 124.106(h) added a new provision regarding control of an 8(a) BD Participant where a disadvantaged individual upon whom eligibility is based is a reserve component member in the United States military who has been called to active duty. Specifically, the proposed rule permitted a Participant to designate one or more individuals to control its daily business operations during the time that a disadvantaged individual upon whom eligibility has been called to active duty in the United States military. The proposed rule also amended § 124.305 to authorize the Participant to suspend its 8(a) BD participation during the active duty call-up period. If the Participant elects to designate one or more individuals to control the concern on behalf of the disadvantaged individual during the active duty call-up period, the concern will continue to be treated as an eligible 8(a) Participant and no additional time will be added to its program term. If the Participant elects to suspend its status as an eligible 8(a) Participant, the Participant's program term would be extended by the length of the suspension when the individual returns from active duty. All comments received regarding this provision supported the proposed change. As such, the changes made to §§ 124.106(h) and 124.305 in the proposed rule to protect reservists called to active duty are finalized in this final rule without change.

Benchmarks

The proposed rule removed § 124.108(f), as well as other references to the achievement of benchmarks contained in §§ 124.302(d), 124.403(d), and 124.504(d). When these regulations were first implemented, the Department of Commerce was supposed to update industry codes every few years to determine those industries which minority contractors were underrepresented in the Federal market. These industry categories have never been revised since the initial publication, and SBA believed that references to them are outdated and should be removed. SBA received six comments in response to this proposal. All six comments supported the proposed change. This final rule adopts the proposed language without change.

Changes Applying Specifically to Tribally-Owned Firms

In the proposed rule, SBA offered or considered changes to five provisions contained in the 8(a) BD regulations that apply specifically to Indian Tribes or Alaska Native Corporations (ANCs). Those proposed changes were: (1) How best to determine whether a Tribe is economically disadvantaged; (2) prohibiting work in a secondary NAICS code that is (or was within the last two years) the primary NAICS code of another 8(a) firm owned by the same Tribe or ANC; (3) clarifying the potential for success requirement as it is applied to Tribes and ANCs; (4) making it clear that any Tribal member may participate in the management of a Tribally-owned firm and need not individually qualify as economically disadvantaged; and (5) requiring 8(a) firms owned by Tribes and ANCs to submit information identifying how its 8(a) participation has benefited the Tribal or native members and/or the Tribal, native or other community as part of its annual review submission. SBA received more than 100 comments relating to proposed changes to § 124.109. The comments pertaining to each of the five areas of consideration are discussed below in turn.

The Small Business Act permits 8(a) Participants to be owned by "an economically disadvantaged Indian Tribe (or a wholly owned business entity of such Tribe." 15 U.S.C. 637(a)(4)(A)(i)(II). The term Indian Tribe includes any Alaska Native village or regional corporation. 15 U.S.C. 637(a)(13). Pursuant to the Alaska Native Claims Settlement Act, a concern which is majority owned by an ANC is deemed to be both owned and controlled by Alaska Natives and an economically disadvantaged business. As such, ANCs do not have to establish that they are "economically disadvantaged." Conversely, Indian Tribes are not afforded the same automatic statutory economic disadvantage designation. Current § 124.109(b) requires Tribes to demonstrate their economic disadvantage through the submission of data, including information relating to Tribal unemployment rate, per capita income of Tribal members, and the percentage of the Tribal population below the poverty level. The proposed rule requested comments on how best to determine whether a Tribe should be considered "economically disadvantaged." Specifically, SBA sought comments as to whether the current approach to economic disadvantage for Tribes should continue, or whether a bright line assets or net worth test for Tribes should be used instead. The current regulation also requires a Tribe to demonstrate its economic disadvantage only once. SBA also sought comments regarding whether this one time demonstration of economic disadvantage makes sense.

SBA received more than 40 comments responding to its request for comments on economic disadvantage for Indian Tribes. Several commenters believed that Tribes should be afforded the same presumption of economic disadvantage as that given to ANCs. It is SBA's view that it does not have the authority to make such a change. SBA is constrained by the specific language of the Small Business Act, which requires firms to be owned by an "economically disadvantaged" Indian Tribe. While ANSCA provides economic disadvantage status to ANCs so that SBA does not have to determine whether any specific ANC is economically disadvantaged, Tribes have not been given similar statutory treatment. Thus, SBA must determine whether a specific Tribe may be considered economically disadvantaged. Regarding the best approach SBA should take to determine whether a Tribe qualifies as economically disadvantaged, commenters universally rejected any bright line asset or net worth test. Several commenters noted that it would be difficult to structure a bright line test suited to all Tribes given the vast differences among Tribes as to the number of Tribal members, number of members living on Tribal land, and other demographics, such as the average age of the membership. Other commenters believed that any asset or net worth test ignores historical data and the unique circumstances of Tribes, and would be subject to claims that it involves culturally biased criteria. Most commenters believed that the current approach to economic disadvantage for Tribes, although not perfect, makes the most sense. It allows an individual Tribe to address economic disadvantage in ways most relevant to that Tribe. SBA understands that every Tribe does not always possess or it may be very difficult for the Tribe to obtain data relating to Tribal unemployment rate, per capita income of Tribal members, or the percentage of the Tribal population below the poverty level. After considering the concerns raised in the comments, SBA agrees that an asset or net worth test could be misleading, and has not changed how it will determine economic disadvantage for Tribes. In addition, SBA has added to this final rule a provision authorizing a Tribe, where the Tribe deems it to be helpful, to request a meeting with SBA prior to submitting an application for 8(a) BD participation for its first applicant firm

to better understand what SBA requires. Several commenters also recommended that SBA clarify the requirement that a Tribe demonstrate its economic disadvantage only in connection with its first Tribally-owned firm applying for 8(a) BD participation. In response, SBA has clarified that SBA does not expect a Tribe to demonstrate economic disadvantage as part of every Tribally-owned 8(a) application.

The final rule also clarifies that ownership of an 8(a) applicant or Participant by a Tribe or ANC must be unconditional. The requirement that ownership be unconditional is contained in the Small Business Act, and the final rule merely incorporates that language to avoid any confusion.

The proposed rule prohibited a newly certified Tribally-owned Participant from receiving an 8(a) contract in a secondary NAICS code that is the primary NAICS code of another Participant (or former participant that has left the program within two years of the date of application) owned by the Tribe for a period of two years from the date of admission to the program. The supplementary information to the proposed rule also identified an alternative proposal that allowed such secondary work on a limited basis (*e.g.,* no more than 20% or 30% of its 8(a) work could be in a NAICS code that was/is the primary NAICS code of a former/other Tribally-owned Participant). SBA sought comments on both approaches. SBA received a substantial number of comments responding to this proposal. Several commenters opposed allowing Tribes to own more than one firm in the 8(a) BD program generally, believing that such an occurrence creates an unfair competitive advantage. Congress has specifically authorized Tribal/ANC ownership of firms in the 8(a) BD program. Such ownership serves a broader purpose than mere business development. SBA does not believe that it can restrict a Tribe to own only one firm in the 8(a) BD program under the current statutory authority. As such, this final rule does not change the authority of a Tribe or ANC to own more than one firm in the 8(a) BD program. None of the commenters who addressed the proposed language supported the strict prohibition on receiving any 8(a) contracts in a secondary NAICS code that was the primary NAICS code of a sister company. Commenters believed that such a rule would hinder the growth and diversification of firms owned by Tribes and ANCs. Many commenters also opposed the alternative proposal allowing secondary work up to a specified percentage of the firm's overall 8(a) revenues for the same reason. They believed that any restriction on a firm's ability to diversify as that firm deems appropriate would hamper the firm's growth and ultimate ability to remain a viable business after leaving the 8(a) BD program. While some commenters opposed the alternative proposal allowing secondary work on a limited basis, they considered it to be a better approach than the strict ban as proposed. A few commenters offered additional alternatives. One commenter recommended that if SBA was concerned that one Tribally-owned or ANC-owned firm would be the successor contractor for an 8(a) contract previously performed by another 8(a) Participant owned by the Tribe or ANC then the regulation should address that concern specifically and not prohibit work in secondary NAICS codes generally. SBA agrees. As noted in the supplementary information to the proposed rule, when SBA certifies two or more firms owned by a Tribe or ANC for participation in the 8(a) BD program, SBA expects that each firm will operate and grow independently. The purpose of the 8(a) BD program is business development. Having one business take over work previously performed by another does not advance the business development of two distinct firms. SBA does not believe that a Tribally-owned or ANC-owned firm should be able to perform a specific 8(a) contract for many years and then, when it leaves the 8(a) BD program, to pass that contract on to another 8(a) firm owned by the Tribe or ANC. In such a case, the negative perception is that one business is operating in the 8(a) BD program in perpetuity by changing its structure or form in order to continue to perform the contracts that it has previously performed. SBA seeks to address this concern without unduly restricting a Participant's ability to grow and diversify. Thus, SBA adopts the comment to restrict a Tribe's or ANC's ability to pass an 8(a) contract from one firm that it owns and operates to another. Specifically, the final rule provides that a firm owned by a Tribe or ANC may not receive a sole source 8(a) contract that is a follow-on contract to an 8(a) contract that was performed immediately previously by another Participant (or former Participant) owned by the same Tribe. One commenter recommended that the same rules regarding work in secondary NAICS codes should apply equally to firms owned by Native Hawaiian Organizations (NHOs). SBA agrees, but also believes that the same is true for Community Development Companies (CDCs). This final rule makes the provisions pertaining to Tribes, ANCs, NHOs and CDCs consistent.

Finally, one commenter recommended that SBA more fully define what the term primary NAICS code means for purposes of determining whether a new applicant owned by the Tribe could be eligible for 8(a) BD participation. Specifically, the commenter noted that several NAICS codes identified in SBA's size regulations are further divided by specific subcategory having differing size standards for two or more subcategories. The commenter questioned whether SBA's regulations permitted a Tribe to own two firms with the same primary six digit NAICS code, but different subcategories of work with different corresponding size standards. For example, NAICS code 541330 is divided into four subcategories: Engineering Services, with a corresponding size standard of $4.5 million in average annual receipts; Military and Aerospace Equipment and Military Weapons, with a corresponding size standard of $27 million in average annual receipts; Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992, with a corresponding size standard of $27 million in average annual receipts; and Marine Engineering and Naval Architecture, with a corresponding size standard of $18.5 million in average annual receipts. SBA's Office of Size Standards has identified that these subcategories are different enough to warrant separate recognition and that the industries are different enough to warrant distinct size standards. SBA believes that general Engineering Services, with a corresponding size standard of $4.5 million in average annual receipts, is vastly different from Military and Aerospace Equipment and Military Weapons, with a corresponding size standard of $27 million in average annual receipts. As such, it is SBA's view that a Tribe could own one Participant in the 8(a) BD program with a primary NAICS code of 541330 doing marine engineering and naval architecture and qualify a new firm with a primary NAICS code of 541330 doing general engineering services, provided the current firm did not start off in the general engineering services subcategory and switch to a different subcategory with a larger size standard within the last two years. SBA believes the regulations should clarify SBA's intent on this issue. Thus, the final rule makes clear that the same primary NAICS code

means the six digit NAICS code having the same corresponding size standard.

The proposed rule clarified the potential for success requirement for Tribally-owned applicants contained in § 124.109(c)(6). Specifically, in addition to the current ways in which SBA may determine that a firm has the potential for success required to participate in the 8(a) BD program, the proposed rule authorized SBA to find potential for success where a Tribe has made a firm written commitment to support the operations of the applicant concern and the Tribe has the financial ability to do so. SBA received overwhelming support for this proposed provision. Many of the comments praised SBA for recognizing that unlike a firm owned by one or more individuals, the viability of a firm owned by a Tribe or ANC is not dependent only on the firm's profitability. Several commenters recommended that similar treatment should be afforded to NHOs. As with the issue relating to work in secondary NAICS codes, SBA believes that this provision should apply equally to firms owned by Tribes, ANCs, NHOs and CDCs. This final rule makes the changes necessary for such equal treatment. As such, the final rule permits an applicant concern owned by a Tribe, ANC, NHO or CDC to establish potential for success where the Tribe, ANC, NHO or CDC has made a firm written commitment to support the operations of the applicant concern and it has the financial ability to do so.

The proposed rule also deleted the word "disadvantaged" in § 124.109(c)(4) to make clear that any Tribal member may participate in the management of a Tribally-owned firm and need not individually qualify as economically disadvantaged. This change was made to allow Tribally-owned firms to attract the most qualified Tribal members to assist in running 8(a) Tribal businesses. SBA received 35 comments regarding this provision. Although most commenters agreed that this proposed change was an improvement over the previous regulatory language, they questioned whether the proposed language went far enough in clarifying that a Tribe had the discretion to hire any individual, whether or not a member of any Tribe, to run the day-to-day operations of a Tribally-owned 8(a) Participant. SBA believes that the proposed regulatory text gives that discretion to Tribes. Tribes must demonstrate that they control Tribally-owned firms. Tribes are then given flexibility to structure the control as they deem it best for their circumstances. It may be through committees, teams or Boards of Directors which are controlled by Tribal members, or it may be through non-disadvantaged employees who can be hired and fired and are controlled by the Tribe. Where non-disadvantaged employees manage a Tribally-owned firm, the regulations have required that the Tribally-owned firm have a management development plan showing how Tribal members will gain management experience to be able to manage the concern or similar Tribally-owned concerns in the future. SBA continues to believe that is a good policy. However, in response to these comments, SBA has made minor language revisions to more clearly state SBA's position.

In response to audits of the 8(a) BD program conducted by the Government Accountability Office (GAO) and SBA's OIG, SBA proposed an amendment to the annual review provisions contained in § 124.112(b) to require each Participant owned by a Tribe, ANC, NHO or CDC to submit information demonstrating how its 8(a) participation has benefited the Tribal or native members and/or the Tribal, native or other community as part of its annual review submission. The proposed rule identified that each firm should submit information relating to funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services to the affected community.

SBA received more than 60 comments addressing this proposed change. Most commenters opposed the requirement, expressing concern about the lack of specificity in the proposed rule and the difficulty firms would have in trying to report this information at the Participant level. Several commenters pointed out that a uniform data source for the information being requested does not currently exist and the benefits vary widely among the groups and cannot be uniformly quantified. Commenters noted that it would be nearly impossible to separate the benefits a Tribe or ANC community receives from individual 8(a) contracts or even individual 8(a) firms, especially where a Tribe has multiple 8(a) firms receiving both 8(a) and non-8(a) contracts. A few commenters noted that 8(a) firms owned by ANCs do not necessarily contribute benefits directly to the shareholders, but rather direct their profits to the parent ANC who in turn distributes the benefits. Most expressed concern that the potential end result of the requirement will be burdensome, intangible and difficult to quantify. Commenters recommended that if this requirement remained, benefits should be reported at the Tribe/ANC/NHO/CDC level, instead of requiring each Participant individually to try to somehow track benefits flowing from it back to the affected community. Although SBA understands the concerns raised generally in opposition to reporting benefits, SBA feels compelled to address the recommendations made by the GAO and OIG. As such, the requirement to report benefits that flow to Tribal or native members and/or the Tribal, native or other community is retained in this final rule. However, SBA agrees with the majority of commenters that it would be virtually impossible for individual 8(a) firms to track and report on benefits that ultimately flow to the affected community because of their 8(a) participation. In an effort to strike a balance between the concerns raised regarding SBA's monitoring and oversight of the 8(a) BD program and those raised by entity-owned 8(a) Participants regarding their ability to generate meaningful information, only the parent corporations, not the individual subsidiary 8(a) Participants, will be required to submit the requested information. Therefore, the final rule specifies that those 8(a) Participants owned by ANCs, Tribes, NHOs, and CDCs will submit overall information relating to how 8(a) participation has benefited the Tribal or native members and/or the Tribal, native or other community as part of each Participant's annual review submissions, including information about funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services to the affected community. SBA expects that two Participants owned by the same Tribe, ANC, NHO or CDC will submit identical data describing the benefits provided by the Tribe, ANC, NHO or CDC.

Several commenters opposed the reporting of any information relating to benefits flowing to Tribal or native members and/or the Tribal, native or other community, and questioned whether the Federal Government was attempting to dictate how Tribes should provide benefits to their respective communities. A few commenters also noted that this was an added burden imposed on Tribal and ANC-owned Participants that was not required for individually-owned Participants. One comment found it offensive for a non-Tribal government to determine the success or failure of a Tribal effort. Others expressed concern that the data would be used against the program Participants required to provide the data. Several commenters also

recommended that if any reporting requirement relating to benefits flowing to the native or Tribal community remain in the final regulation, then it should not be included within a section entitled "What criteria must a business meet to remain eligible to participate in the 8(a) BD program" because that implies that SBA will somehow evaluate the benefits reported and could determine a firm to be ineligible for further program participation if the reported benefits were deemed insufficient. It was never SBA's intent to evaluate or otherwise determine whether the benefits reported by Tribes, ANCs, NHOs and CDCs were or were not acceptable as compared to the value of 8(a) contracts received by firms owned by those entities. SBA did not intend future eligibility of an 8(a) Participant to be dependent on the amount or the type of benefits provided by the parent Tribe, ANC, NHO or CDC. As such, SBA agrees that the requirement to provide information related to benefits flowing to Tribal or native members and/or the Tribal, native or other community should be contained in a section of SBA's regulations relating to reporting requirements as opposed to the section relating to what a Participant must do to remain eligible to participate in the 8(a) BD program. This final rule moves the proposed provision from § 124.112(b)(8) to a new § 124.604.

Finally, several commenters recommended that SBA delay implementation of any reporting of benefits requirement to allow affected firms to gather and synthesize this data. In addition, these commenters encouraged SBA to establish a task force, comprised of native leaders and SBA, to further study how this requirement could be best implemented without imposing an undue burden on Tribes, ANCs, NHOs or CDCs, or on their affected 8(a) Participants. SBA agrees that further refinement of this requirement may be needed. As such, SBA has delayed implementation of new § 124.604 for six months after the effective date for the other provisions of this final rule. If further refinement takes longer than six months, SBA may delay implementation further. If further delay is necessary, SBA will publish a notice in the **Federal Register** to that effect. During the delayed six months implementation period, SBA anticipates meeting with members of the affected communities to further study and possibly improve this requirement and to develop best practices for utilizing the data collected.

Changes Applicable to Concerns Owned by NHOs

In addition to the changes identified above relating to follow-on contracts and potential for success and the change below regarding sole source limits for NHO-owned concerns, the final rule clarifies other requirements for NHO-owned concerns. Several commenters noted that SBA requires NHOs to be economically disadvantaged and to establish that their business activities will principally benefit Native Hawaiians, but believed that SBA's implementation of these requirements was not clearly set forth in the regulations. A few commenters recommended that SBA's requirement that a majority of an NHO's members must establish that they individually qualify as economically disadvantaged should be included within the regulatory text. Other commenters recommended clarifications relating to the control requirement. In response to these comments, the final rule adds clarifications regarding the current policy on how an NHO qualifies as economically disadvantaged, demonstrates that its business activities benefit Native Hawaiians, and controls an NHO-owned concern. To determine whether an NHO is economically disadvantaged, SBA considers the individual economic status of the NHO's members. The majority of an NHO's members must qualify as economically disadvantaged under § 124.104. For the first 8(a) applicant owned by a particular NHO, individual NHO members must meet the same initial eligibility economic disadvantage thresholds as individually-owned 8(a) applicants (*i.e.,* $250,000 net worth; $250,000 income; and $4 million in total assets). Once that firm is approved for participation in the 8(a) program, it will continue to qualify as economically disadvantaged provided a majority of its members meet the economic disadvantage thresholds for continued eligibility (*i.e.,* $750,000 net worth; $350,000 income; and $6 million in total assets). Because SBA will consider a firm to continue to be owned by an economically disadvantaged NHO where a majority of the NHO's members meet the thresholds for continued eligibility, SBA does not believe that the same NHO should be considered not economically disadvantaged for purposes of qualifying a new applicant if it exceeds one or more of the thresholds for initial eligibility. As such, for any additional 8(a) applicant owned by the NHO, this rule provides that individual NHO members must meet the economic disadvantage thresholds for continued 8(a) eligibility even though the determination is being made with respect to the initial eligibility of that applicant.

The final rule also incorporates the statutory requirement that an NHO must control the applicant or Participant firm. To establish control, the NHO must control the board of directors of the applicant or Participant. There is no statutory requirement that the day-to-day operations of an NHO-owned firm be controlled by Hawaiian Natives of the NHO. The requirement is merely that the NHO controls the firm. As such, an individual responsible for the day-to-day management of an NHO-owned firm need not establish personal social and economic disadvantage.

Excessive Withdrawals

The final rule amends § 124.112(d) requiring what amounts should be considered excessive withdrawals, and thus a basis for possible termination or early graduation. SBA believes that the new definition of withdrawal better addresses the original legislative intent behind the prohibition against excessive withdrawals.

By statute, SBA is directed to limit withdrawals made "for the personal benefit" of a Participant's owners or any person or entity affiliated with such owners. 15 U.S.C. 637(a)(6)(D). Where such withdrawals are "unduly excessive" so that they are "detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan," SBA is authorized to terminate the firm from further participation in the 8(a) BD program. *Id.* SBA's previous regulations broadly defined what a withdrawal was and did not adequately tie termination to withdrawals that were detrimental to the achievement of the Participant's targets, objectives and goals. This unnecessarily hampered a Participant's ability to recruit and retain key employees or to pay fair wages to its officers. The proposed rule amended the definition of what constitutes a "withdrawal" in order to permit a Participant to more freely use its best business judgment in determining compensation. It modified the definition of withdrawal to generally eliminate the inclusion of officers' salaries from the definition of withdrawal and excluded other items currently included within such definition.

SBA received comments both in favor and opposed to the excessive withdrawal provisions contained in the proposed rule. Several commenters suggested eliminating the excessive withdrawal analysis entirely. Many suggested that SBA should look to the

totality of the circumstances to determine if withdrawals are excessive, and not use the thresholds as a bright line test. All commenters that addressed excessive withdrawals suggested that the existing threshold amounts be increased. The comments, however, were not uniform in their approach, and recommended many alternatives as to how SBA should determine excessive withdrawals. Many commenters suggested specific dollar amounts, such as $100,000 more than the proposed thresholds. A few commenters suggested that excessive withdrawals should be based on a reasonable percentage of revenue rather than a fixed dollar value. Several commenters recommended that excessive withdrawals should vary by industry or depending upon the geographic location of the firm. Several commenters suggested that there not be any limits or thresholds and firms be allowed to compensate the owners, officers and employees of the organization based on the viability of the business.

As noted above, the excessive withdrawal concept comes straight from the language of the Small Business Act. As such, SBA does not have the discretion to eliminate this requirement entirely as a few commenters recommended. SBA considered the alternate approaches suggested in the comments, but decided to retain the thresholds based on the revenues generated by the Participant as the most fair and reasonable approach. SBA believes that thresholds that vary from industry to industry or from one geographic location to another would be difficult to implement fairly. In addition, either approach would require further refinement through an additional proposed rule and public comment process. In response to comments, the final rule amends § 124.112(d)(3) to increase each of the current "excessive" withdrawal amounts by $100,000. Thus, for firms with sales of less than $1,000,000 the excessive withdrawal amount would be $250,000 instead of $150,000, for firms with sales between $1,000,000 and $2,000,000 the excessive withdrawal amount would be $300,000 instead of $200,000, and for firms with sales exceeding $2,000,000 the excessive withdrawal amount would be $400,000 instead of $300,000.

The final rule also clarifies that withdrawals that exceed the threshold amounts indentified in the regulations in the aggregate will be considered excessive. SBA believes that this makes sense because officers' salaries generally will not be included within what constitutes a withdrawal. Under the previous regulations, although it was not specifically spelled out, it appeared that withdrawals were excessive if they exceeded the thresholds in the aggregate, not by the individual owner or manager. This was a problem where officers' salaries were included within withdrawals. SBA was concerned that the excessive withdrawal provisions conflicted with the individual economic disadvantage provisions. For example, two disadvantaged individuals could own and operate an applicant or Participant firm and each could receive an income of $190,000 and be considered economically disadvantaged. Where officers' salaries counted as withdrawals, however, a Participant could nevertheless be terminated from the program because the $380,000 in combined salaries exceeded the excessive withdrawal threshold, even for Participants large total revenues. SBA thought that this inconsistency was unfair. One approach could have been to continue to count officers' salaries as withdrawals and determine excessive withdrawals by the individual owner or manager. SBA believes that such an approach would allow too much to be withdrawn from a Participant without adverse consequences and would be detrimental to the overall development of Participant firms. Excluding officers' salaries generally from withdrawals, but looking at withdrawals in the aggregate appears to be a fairer approach to SBA.

SBA recognizes that some firms may try to circumvent the excessive withdrawal limitations through the distribution of salary or by other means. As such, the final rule authorizes SBA to look at the totality of the circumstances in determining whether to include a specific amount as a "withdrawal," and specifically clarifies that if SBA believes that a firm is attempting to get around the excessive withdrawal limitations though the payment of officers' salaries, SBA would count those salaries as withdrawals.

Additionally, in order to more closely comply with statutory language, the final rule further clarifies that in order for termination or graduation to be considered by SBA, funds or assets must be withdrawn from the Participant for the personal benefit of one or more owners or managers, or any person or entity affiliated with such owners or managers, and any withdrawal must be detrimental to the achievement of the targets, objectives, and goals contained in the Participant's business plan. These requirements were not clearly contained in the previous regulations. Adding this language is consistent with the Small Business Act and with the intent of the original statutory provision, which sought to reach "individuals who have engaged in unduly excessive withdrawals." H.R. Conf. Rep. No. 100–1070, at 7 (1988). In determining whether a withdrawal meets this definition, the person or entity receiving the withdrawal will have the burden to show that the withdrawal was not for its personal benefit.

Finally, several commenters suggested that the excessive withdrawal prohibition not apply to firms owned by Tribes, ANCs, NHOs or CDCs. They believed that the community development purposes of the 8(a) BD program for entity-owned Participants is inconsistent with the excessive withdrawal provisions. As long as the Tribe, ANC, NHO or CDC has committed to supporting the firm, the commenters felt that any withdrawals made for the benefit of the Tribe, ANC, NHO or CDC (or community served by such entity) should be permitted. SBA agrees. As stated above, the original statutory provision was intended to apply to individuals who have withdrawn funds from the Participant that are unduly excessive and thus detrimental to the Participant's achievement of the targets, objectives, and goals contain it its business plan. Funds benefitting a Tribe or Tribal community serve a different purpose. SBA does not believe that it should prohibit a Participant owned by Tribe, ANC, NHO or CDC from benefitting the entity or the native or shareholder community. However, if SBA determines that the withdrawals from a firm owned by a Tribe, ANC, NHO or CDC are not for the benefit of the native or shareholder community, then SBA may determine that the withdrawal is excessive. For example, if funds or assets are withdrawn from an entity-owned Participant for the benefit of a non-disadvantaged manager or owner that exceed the withdrawal thresholds, SBA may find that withdrawal to be excessive.

Applications to the 8(a) BD Program

The proposed rule made minor changes to §§ 124.202, 124.203, 124.204 and 124.205 to emphasize SBA's preference that applications for participation in the 8(a) BD program are to be submitted in an electronic format. SBA received only positive comments to these proposed changes. As such, the final rule does not change these provisions from those proposed. Despite the preference for an electronic application, SBA again wants to clarify that nothing in the proposed rule or in this final rule would prohibit hard copy 8(a) BD applications from being submitted to and processed by SBA.

Firms that prefer to file a hard copy application may continue to do so.

The proposed rule also changed the location of SBA's initial review of applications from ANC-owned firms from SBA's Anchorage, Alaska District Office to SBA's San Francisco unit of the Division of Program Certification and Eligibility (DPCE). Most comments opposed this move, believing that the SBA Alaska District Office better understood issues relating to ANCs and ANC-owned applicants. Commenters expressed concern about making interactions between ANC-owned applicants and the initial SBA reviewers more difficult because of the time difference or the imposition of a travel burden. Several commenters suggested SBA establish one or more offices to review only those applications from Tribally-owned concerns. Other commenters suggested that SBA take the provision identifying the San Francisco DPCE unit as the office that would initially review applications from ANC-owned concerns out of the regulations in order to provide flexibility to possible future changes in application processing. SBA has two DPCE units, one in San Francisco and the other in Philadelphia. All applications for participation in the 8(a) BD program, whether from ANC-owned, Tribally-owned or individually-owned firms, are processed by one of these two offices. The concerns raised by commenters about the possible difficulty of interacting with a reviewing office that is located in another State are no different than those faced by many individually-owned applicant firms. Both DPCE units interact daily with applicants located in other States. In addition, applications from ANC-owned firms come from firms located throughout the United States, not just from those located in Alaska. ANC-owned applicant firms not located in Alaska have historically dealt with an SBA processing office in another State (before this change, the Alaska District Office) without trouble. Thus, SBA does not see this physical presence issue as a problem. SBA has staffed the offices and for consistency purposes has designated the San Francisco DPCE unit to review and process all applications from ANC-owned firms. SBA agrees, however, that there is no need for the regulations to specifically address which DPCE unit will process specific types of applications. That can be done through internal guidance which can be changed more easily than regulations, and will provide more flexibility to SBA for possible future changes in application processing. As such, the final rule does not specifically state that applications from ANC-owned firms will be processed by the San Francisco DPCE unit even though it is SBA's intent to continue that policy. SBA will use its discretion to have the Philadelphia DPCE unit process applications from ANC-owned applicants in appropriate circumstances, such as where there is an uneven distribution of applications and the San Francisco DPCE unit has a backlog of cases while the Philadelphia DPCE unit does not.

SBA believes this is the best use of its currently available resources. Applicants to the 8(a) BD program are welcomed and encouraged to tap the Alaska District Office for assistance in the application process and SBA does not expect or require applicants to travel to DPCE units in order to complete the application process. As previously discussed, SBA encourages applicants to apply to the program through electronic means and these applications are available online. Additionally, SBA conducts training in the area of initial 8(a) eligibility on an ongoing basis and regularly includes components in the training which address areas unique to the Tribally-owned concerns.

The proposed rule also added a new paragraph to § 124.204, which governs application processing, to clarify that the burden of proof to demonstrate eligibility for participation in the 8(a) BD program is on the applicant and permitted SBA to presume that information requested but not submitted would be adverse (adverse inference). SBA received comments both in favor and opposed to this adverse inference concept. Those in favor recognized that the burden of proof for establishing eligibility must rest with the applicant. To do otherwise (*e.g.,* to require SBA to prove that an applicant does not meet the eligibility requirements) would not make sense. Those commenters opposed to the change expressed concern that information may be inadvertently omitted and the application process unreasonably extended. SBA disagrees. The burden of proof for establishing eligibility rests with the applicant and SBA believes that this clarification will streamline the application process. Requiring an applicant to submit all requested information when SBA makes a specific request for information it deems to be relevant is critical to the application process and is reasonable. When that information is not provided, it is rational for SBA to presume that the information would be adverse to the firm and conclude that the firm has not demonstrated eligibility in the area to which the information relates. SBA's intended effect is to eliminate the delay that results from making repeat information requests. A similar provision has existed as part of SBA's size and HUBZone regulations for many years and is cited regularly in eligibility determinations relating to those programs.

Finally, in response to GAO Report Number: GAO–10–353, entitled, "Steps Have Been Taken to Improve Administration of the 8(a) Program, but Key Controls for Continued Eligibility Need Strengthening" with regard to the submission of tax returns and forms, this final rule clarifies that an application must include copies of signed tax returns and forms. Although this is not a new requirement, one of the conclusions reached in the audit by GAO is that not all copies of tax returns contained in SBA's application files were signed.

Graduation

The proposed rule amended §§ 124.301 and 124.302 to utilize the terms "early graduation" and "graduation" in a way that matches the statutory meaning of those terms. *See* amendment to § 124.2, explained above. Several commenters supported the distinction made in the proposed rule between graduating and exiting the 8(a) BD program. A few commenters disagreed with allowing SBA to "kick out" any firms before their nine year program term expires. SBA believes that early graduation is not only supported by the statutory language of the Small Business Act, it is in fact required where a firm meets the goals and objectives set forth in its business plan, regardless of how long a firm has been in the 8(a) BD program. As such, the final rule continues to authorize early graduation in appropriate circumstances. Many commenters opposed proposed § 124.302(c), which authorized early graduation where a Participant exceeded the size standard corresponding to its primary NAICS code for two successive program years. Commenters believed such a rule was contrary to the business development purposes of the 8(a) program, and did not take into account the cyclical nature of small businesses where revenues can vary greatly from one year to the next. One commenter believed that this proposed provision would be a disincentive for firms to enter the 8(a) program in industries with small size standards. SBA does not intend to discourage any Participant from expanding or seeking business opportunities in diverse areas. However, as previously stated, where a firm has grown to be other than small in its

primary NAICS code, SBA believes that the program has been successful and it is reasonable to conclude that the firm has achieved the goals and objectives of its business plan. Where a firm's business plan goals and objectives have been achieved, early graduation is appropriate.

Termination From the 8(a) BD Program

The proposed rule made three amendments to § 124.303 regarding termination from the 8(a) BD program. First the proposed rule amended § 124.303(a)(2) to clarify that a Participant could be terminated from the program where an individual owner or manager exceeds any of the thresholds for economic disadvantage (*i.e.,* net worth, personal income or total assets), or is otherwise determined not to be economically disadvantaged, where such status is needed for the Participant to remain eligible. SBA received no comments regarding this provision, and the final rule adopts the proposed language. Second, the proposed rule amended § 124.303(a)(13) to be consistent with the proposed changes to § 124.112(d)(13) regarding excessive withdrawals being a basis for termination. Several commenters supported the proposed changes. The final rule makes minor changes to more closely align this provision with § 124.112(d) and the statutory authority regarding termination for excessive withdrawals. The proposed rule authorized termination where an excessive withdrawal was deemed to "hinder the development of the concern." SBA believes that this proposed language did not precisely capture the statutory authority. Specifically, § 8(a)(6)(D) of the Small Business Act, 15 U.S.C. 637(6)(D), authorizes SBA to terminate a firm from participating in the 8(a) BD program where SBA determines that the withdrawal of funds was "detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan." SBA has adopted that language in this final rule. Third, the proposed rule amended § 124.303(a)(16) to remove the reference to part 145, a regulatory provision that addresses nonprocurement debarment and suspension that was moved to 2 CFR parts 180 and 2700. The two comments SBA received regarding this provision did not pertain to the ministerial change to the reference citation, but, rather, questioned whether a voluntary exclusion should be a basis for possible termination. This basis for possible termination existed prior to the proposed rulemaking process. It was not a change to which public comment was appropriate. SBA also notes that the first sentence in § 124.303(a) clearly makes termination discretionary, depending upon the good cause shown. As such, SBA continues to believe that a voluntary exclusion may be good cause for termination depending upon the underlying facts which caused the voluntary exclusion.

Effect of Early Graduation or Termination

The proposed rule also amended § 124.304(f) regarding the effect an early graduation or termination would have. It provided that a firm which early graduates or is terminated from the 8(a) BD program could generally not self certify its status as an SDB for future procurement actions. If the firm believes that it does qualify as an SDB and seeks to certify itself as an SDB, the firm must notify the contracting officer that SBA early graduated or terminated the firm from the 8(a) BD program. The firm must also demonstrate either that the grounds upon which the early graduation or termination was based do not affect its status as an SDB, or that the circumstances upon which the early graduation or termination was based have changed and the firm would now qualify as an SDB. The proposed rule also provided that whenever a firm notifies a contracting officer that it has been terminated or early graduated by SBA along with its SDB certification, the contracting officer must protest the SDB status of the firm so that SBA can make a formal eligibility determination. SBA received several comments supporting the clarification that a firm could not self-certify its SDB status without addressing a previous termination or early graduation from the 8(a) BD program. Several commenters, however, also believed that a contracting officer should not be required to protest a firm's SDB status in every instance in which the firm identifies that it had been terminated or early graduated from the 8(a) BD program. They felt that contracting officers should have the discretion to determine if the information provided by a firm with its SDB certification was sufficient for the contracting officer to believe that the firm qualified as an SDB at the time of its certification. They believed that a contracting officer should protest a firm's SDB status only where he or she did not believe that the firm currently meets the SDB requirements. SBA agrees and has changed this provision to allow a contracting officer to accept an SDB certification where he or she believes that the firm currently qualifies as an SDB, and to protest the firm's SDB status to SBA where he or she continues to have questions about the firm's current SDB status.

Suspensions for Call-Ups to Active Duty

As noted above, the proposed rule amended § 124.305 to permit SBA to suspend an 8(a) Participant where the individual upon whom eligibility is based can no longer control the day-to-day operations of the firm because the individual is a reserve component member in the United States military who has been called to active duty. Suspension in these circumstances is intended to preserve the firm's full term in the program by adding the time of the suspension to the end of the Participant's program term when the individual returns to control its daily business operations. SBA received mostly favorable comments in response to this provision. A few commenters sought clarification of a few points. One commenter stated that not all activities as reservists require deployment, and that activation is not the same as deployment. SBA does not use the word deployment in the regulation. Any reservist called to active duty who can no longer run the day-to-day operations of his or her 8(a) Participant firm could elect to be suspended during the call-up period. SBA believes that is clear from the regulatory text and that no further clarification is needed. Another commenter requested clarification as to whether a firm can continue to perform 8(a) contracts already awarded if the firm chooses to be suspended during the call-up period. As with any suspension, a firm is always required to complete performance of contracts it was awarded prior to the suspension. SBA believes this is clear from the current regulatory text in § 124.305(b)(4), but has added a new paragraph (i) to clarify SBA's intent nevertheless.

Task and Delivery Order Contracts

The proposed rule amended § 124.503(h) to address task and delivery order contracts. In order to help 8(a) concerns compete in the current multiple-award contracting environment, SBA proposed to allow agencies to receive 8(a) credit for orders placed with 8(a) concerns under contracts that were not set aside for 8(a) concerns as long as the order is offered to and accepted for the 8(a) BD program and competed exclusively among eligible 8(a) concerns, and as long as the limitations on subcontracting provisions apply to the individual order. SBA received more than 20 comments in support of this proposal. Commenters specifically agreed that procuring

agencies should not be able to take 8(a) credit for the award of an order to an 8(a) Participant that was not competed solely among eligible 8(a) Participants. The final rule adopts the proposed language and merely allows contracting officers the discretion to reserve orders for 8(a) concerns if they so choose. The rule does not require any contracting officer to make such a reservation. If a contracting officer chose not to reserve a specific order for 8(a) concerns (*e.g.,* if a contracting officer went to an 8(a) firm, a small business, and a large business off a schedule or otherwise competed an order among 8(a) and one or more non-8(a) concerns), the contracting officer could continue to take SDB credit for the award of an order to an 8(a) firm, but could not count the order as an 8(a) award.

Barriers to Acceptance and Release From the 8(a) BD Program

The proposed rule amended § 124.504(a) to add a provision limiting SBA's ability to accept a requirement for the 8(a) BD program where a procuring agency expresses a clear intent to make a HUBZone or service disabled veteran-owned (SDVO) small business award prior to offering the requirement to SBA for award as an 8(a) contract. The previous regulation identified the small business set aside program, but not the HUBZone or SDVO small business programs. Commenters supported this change, specifically recognizing SBA's position relating to parity among the various small business contracting programs. One commenter recommended that the women-owned small business (WOSB) program be added to the list of small business programs that would limit SBA's ability to accept a requirement for the 8(a) BD program. SBA agrees. As such the final rule would limit SBA's ability to accept a requirement for the 8(a) BD program where a procuring agency expresses a clear intent to make a small business set-aside, or HUBZone, SDVO small business, or WOSB award prior to offering the requirement to SBA for award as an 8(a) contract.

The proposed rule also amended § 124.504(e) to require that follow-on or repetitive 8(a) procurements would generally remain in the 8(a) BD program unless SBA agrees to release them for non-8(a) competition. This had been SBA's policy, but had not been previously incorporated into the regulations. If a procuring agency would like to fulfill a follow-on or repetitive acquisition outside of the 8(a) BD program, it must make a written request to and receive the concurrence of the AA/BD to do so. Release may be based on an agency's achievement of its SDB goal, but failure to achieve its HUBZone, SDVO, or WOSB goal, where the requirement is not critical to the business development of the 8(a) Participant that is currently performing the requirement or another 8(a) BD Participant. SBA received nine comments in support of this provision. The commenters believed that incorporating this policy into the regulations was an important safeguard to ensuring that the business development purposes of the 8(a) BD remain strong. The final rule adopts the proposed language.

Competitive Threshold Amounts

The proposed rule amended § 124.506 to adjust the competitive threshold amounts to $5,500,000 for manufacturing contracts and $3,500,000 for all other contracts to align with the changes made to the Federal Acquisition Regulation (FAR) to implement an inflationary adjustment authorized by 41 U.S.C. 431a. *See* 71 FR 57363 (September 28, 2006). Several commenters supported the change to incorporate the competitive threshold amounts contained in the FAR. They believed that removing the conflict between SBA's regulations and the FAR will also eliminate possible confusion in the contracting community. Several commenters recommended increasing the competitive threshold amounts, believing that such a change would better promote business development by making larger 8(a) contracts easier for procuring agencies to award and thus providing easier access to larger contracts for 8(a) Participants. Since the publication of the proposed rule, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have determined that a further inflation adjustment to the 8(a) competitive threshold amounts is warranted and have set the new amounts at $6,500,000 as the competitive threshold for contracts assigned a manufacturing NAICS code and $4,000,000 as the competitive threshold for all other contracts. 75 FR 53129 (Aug. 30, 2010). The councils are authorized by section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 to adjust acquisition-related thresholds every five years for inflation using the Consumer Price Index (CPI) for all urban consumers, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. As these thresholds are statutory and SBA cannot change them administratively, the final rule adopts the language from the final rule amending the FAR.

Several commenters opposed allowing sole source contracts above the competitive threshold amounts to firms owned by ANCs, Tribes, and, for Department of Defense (DoD) contracts, NHOs. The authority to permit these sole source awards is statutory and cannot be changed administratively by SBA. As such, the authority for these awards continues to be incorporated in the final rule.

In addition, in order to address the perceived problem of non-8(a) firms unduly benefitting from the 8(a) BD program through joint ventures with 8(a) firms owned by ANCs, Tribes and NHOs, the proposed rule prohibited non-8(a) joint venture partners to 8(a) sole source contracts above the competitive thresholds from also being subcontractors under the joint venture prime contract. If a non-8(a) joint venture partner seeks to perform more work under the contract, then the amount of work done by the 8(a) partner to the joint venture must also increase. SBA recognizes that the mentor/protégé aspect of the 8(a) BD program can be an important component to the overall business development of 8(a) small businesses. However, SBA does not believe that non-8(a) businesses, particularly non-8(a) large businesses, should benefit more from an 8(a) contract than 8(a) protégé firms themselves. As such, the change to disallow subcontracts to non-8(a) joint venture partners is not meant to penalize Tribal, ANC and NHO 8(a) firms, but, rather, to ensure that the benefits of the program flow to its intended beneficiaries. SBA received a substantial number of comments in response to this proposal. There were a large number of comments on both sides of this issue. Many commenters supported the proposed change as a legitimate way to ensure that non-8(a) firms do not control or dominate the performance of 8(a) contracts. Other commenters opposed the change because they did not want to discourage firms from serving as mentors and providing needed business development assistance to protégé firms. A few of these commenters also recommended that SBA increase its oversight of mentor/protégé relationships instead of prohibiting all subcontracting to non-8(a) joint venture partners. Several commenters recommended that the restriction that non-8(a) joint venture partners cannot also be subcontractors to the joint venture prime contract should be extended beyond sole source 8(a) contracts above the competitive threshold amounts. These commenters believed that it is important to ensure

that non-disadvantaged businesses, particularly large businesses in the context of any joint venture between a protégé firm and its mentor, do not obtain more benefits from an 8(a) contract than the 8(a) Participant itself does. SBA agrees and has made a change to § 124.513(d) that would generally prohibit a non-8(a) joint venture partner, or any of its affiliates, from acting as a subcontractor to the joint venture awardee on any 8(a) contract. The restriction is intended to apply to all subcontracting tiers, so that a non-8(a) joint venture partner could not receive a subcontract from a firm that was acting as a subcontractor to the joint venture or another subcontractor of the joint venture. In response to a commenter that was concerned that there might not be an appropriate subcontractor available if SBA prohibited non-8(a) joint venture partners from acting as subcontractors across the board, the final rule allows a non-8(a) joint venture partner, or an affiliate of the non-8(a) joint venture partner, to act as a subcontractor where the AA/BD determines that other potential subcontractors are not available. This could be because no one else has the capability to do the work, or because those firms that have the capability are busy with other work and not available to be a subcontractor on the 8(a) contract in question. If a non-8(a) joint venture partner seeks to do more work, the additional work must generally be done through the joint venture, which would require the 8(a) partner(s) to the joint venture to also do additional work to meet the 40% requirement set forth in § 124.513(d)(1).

Several commenters noted that prohibiting a non-8(a) partner to a joint venture from subcontracting with the joint venture did not make sense in the context of an unpopulated joint venture where both the 8(a) and non-8(a) partners must technically be subcontractors to the joint venture. SBA agrees. In order to ensure that the 8(a) partner(s) to a joint venture perform at least 40% of the work performed by an unpopulated joint venture, § 124.513(d)(2)(ii) of the final rule provides that the total amount of work done by the partners on the contract (at any level) will be aggregated and the work done by the 8(a) partner(s) must be at least 40% of the total done by all partners. In determining the amount of work done by a non-8(a) partner, all work done by the non-8(a) partner and any of its affiliates at any subcontracting tier will be counted.

The final rule eliminates the reference in § 124.506(b)(4) that a joint venture between one or more eligible Tribally-owned, ANC-owed or NHO-owned Participants and one or more non-disadvantaged business concerns could be awarded a sole source 8(a) contract above the competitive threshold amounts provided that no non-8(a) joint venture partner also acts as a subcontractor to the joint venture awardee. In light of the changes made to § 124.513, it is not necessary to repeat those same requirements in § 124.506. As such, the final rule provides in § 124.506 that a joint venture with a non-8(a) firm can receive an 8(a) contract above the competitive threshold amounts if it meets the requirements of § 124.513.

The supplemental information to the proposed rule noted that SBA considered other alternatives to disallowing subcontracting to a non-8(a) joint venture partner, and asked for comments on those and other alternatives. Commenters did not believe that eliminating joint ventures on sole source awards above the competitive threshold amounts was a reasonable approach. They felt that such an alternative would discourage firms from being mentors for Tribal, ANC and NHO-owned Participants and, thus, would significantly hamper the ability of such firms to fully receive valuable business development assistance. Commenters also believed that the alternative that permitted sole source joint venture contracts above the competitive threshold amounts only where the 8(a) partner(s) to the joint venture performed a specified percent of the entire contract itself was unworkable. They observed that one of the principle reasons that a firm enters into a joint venture relationship in order to perform a contract is because the firm lacks the resources necessary to perform the contract on its own. In the case of an 8(a) or small business set aside procurement, this means that the firm is generally unable to meet the 50% performance of work requirement by itself and, therefore, looks to another firm to assist it in meeting that requirement and in performing the overall procurement. For the larger contracts to which this restriction would apply (*i.e.,* the sole source contracts above the competitive threshold amounts), a firm may not only not be able to perform 50% of the entire contract, it may also not be able to perform a smaller percentage (*e.g.,* 40%) of the entire contract. As such, commenters did not believe this alternative would be conducive to joint venture relationships and should not be pursued. Finally, a few commenters also thought that the alternative that would require a majority of subcontract dollars under a sole source 8(a) joint venture contract between a protégé firm and its mentor to be performed by small businesses was not an attractive alternative. While they believed that attempting to ensure that small businesses performed a certain percentage of subcontracting work was a good objective, they felt that this alternative would impose a subcontracting plan requirement on small businesses that are currently exempt from having subcontracting plans. In addition, they questioned the logic of requiring subcontract work be performed by small businesses when the prime contractor qualified as small and was already performing a significant portion of the work on the contract. They reasoned that such an approach would give small business prime contractors fewer subcontracting options and could adversely affect their ability to fulfill the procurement at a fair price. Based on the comments received, SBA believes that the proposed approach is the best alternative and has finalized it in this rule.

Bona Fide Place of Business

The proposed rule clarified the procedures a Participant must follow to establish a bona fide place of business in a new location pursuant to § 124.507(c)(2). The rule clarified that a Participant must first submit its request to be recognized as having a bona fide place of business in a different location to the SBA district office that normally services it. This will ensure that there is proper coordination between the two SBA district offices. The servicing district office will forward the request to the SBA district office serving the geographic area of the particular location for processing. The SBA district office in the geographic location of the purported bona fide place of business will then contact the Participant and may ask for further information in support of the Participant's claim. In order for a Participant to establish a bona fide place of business in a particular geographic location, the SBA district office serving the geographic area of that location must determine if that location in fact qualifies as a bona fide place of business under SBA's requirements.

All but one of those submitting comments in response to this proposal supported the proposed change as a necessary clarification. One commenter opposed any geographic limitations for 8(a) contracts, believing that firms should be free to seek contracts anywhere they deem appropriate, whether or not they have a separate

office in a particular location. The bona fide place of business requirement for 8(a) construction contracts is derived from the statutory requirement that "[t]o the maximum extent practicable, [8(a)] construction * * * contracts * * * shall be awarded within the county or State where the work is to be performed." 15 U.S.C. 637(a)(11). Thus, SBA does not believe that it has the unfettered discretion to eliminate all geographic location requirements for 8(a) construction procurements. Through regulations, SBA has permitted a firm to establish a new bona fide place of business in the geographic location where it expects to seek and be awarded 8(a) contracts. SBA believes that this is as far as it may go and still remain consistent with the statutory authority. Several commenters were frustrated by the lack of coordination in the past that has caused a sometimes lengthy process for a Participant to establish a bona fide place of business within the geographical area served by another SBA district office. They anticipated that the new provision would clear up confusion between the various SBA district offices and accelerate the process to establish a new bona fide place of business. A few commenters recommended that SBA clarify the point at which a bona fide business is deemed to exist. In response, this final rule clarifies that the effective date of a bona fide place of business is the date that the evidence (paperwork) shows that the business in fact regularly maintained its business at the new geographic location. The district office needs to look at the written evidence, including leases, payroll records (showing the hiring of one or more individuals at the new location), date of filings with the State to do business in the State, and bills. Although the facts showing exactly when a firm has a bona fide place of business may not be precise, based on the evidence, a district office does have some discretion to determine when it believes the bona fide place of business was established. However, it is not reasonable for SBA to say that a firm does not have a place of business until such time as SBA does the analysis or does a site visit to determine that a bona fide office exists at a particular point in time. The determination is based on the facts as supported by the evidence not when SBA makes the determination. Similarly, the date of the site visit is not the determinative date of when a bona fide place of business was established.

Competitive Business Mix

The proposed rule amended § 124.509(a)(1) to clarify that work performed by an 8(a) Participant for any Federal department or agency other than through an 8(a) contract, including work performed on orders under the General Services Administration (GSA) Multiple Award Schedule program, and work performed as a subcontractor, including work performed as a subcontractor to another 8(a) Participant on an 8(a) contract, qualifies as work performed outside the 8(a) BD program. This change was made to respond to specific questions raised concerning whether orders off the GSA Schedule and subcontracts on 8(a) contracts counted against their competitive business mix requirement. The majority of commenters supported the clarification. A few commenters recommended that SBA count competitive 8(a) awards towards the non-8(a) business activity targets. They argued that these targets are meant to wean Participants away from sole source 8(a) contracting so that the firms are able to compete and survive after leaving the 8(a) BD program, and that 8(a) competition is more like non-8(a) competition than it is like 8(a) sole source awards. SBA does not believe that such a recommendation is consistent with the statutory authority. In authorizing the non-8(a) business activity targets, the Small Business Act speaks of "contracts awarded other than pursuant to section 8(a)." 15 U.S.C. 636(j)(10)(I). Competitive 8(a) contracts are obviously awarded pursuant to section 8(a) of the Small Business Act, and, thus, cannot be included as "contracts awarded other than pursuant to section 8(a)."

Several commenters recommended that where an 8(a) contract is awarded to a joint venture, only the revenue going to the 8(a) Participant should count as 8(a) revenue for competitive business mix purposes. While this approach is initially appealing, SBA believes that it would lead to skewed results. First, procuring agencies count the entire 8(a) award toward their small disadvantaged business goal, and the entire contract amount is coded as an 8(a) award. It seems inconsistent to count the entire contract amount as an 8(a) award for one purpose (goaling) but not another (competitive business mix). Second, if SBA counted only the revenues going to the 8(a) partner(s) in an 8(a) joint venture contract, others would argue that work performed and revenues received by subcontractors should also not be counted as 8(a) revenue for the 8(a) Participant prime contractor. Thus, SBA has not made the recommended change.

Administration of 8(a) Contracts

The proposed rule also added clarifying language to § 124.512 to make clear that tracking compliance with the performance of work requirements is a contract administration function which is performed by the procuring activity. SBA received a few comments supporting and a few comments opposing this clarification. One commenter thought that it made sense to put this clarification in the regulation because the regulation would then conform with the Partnership Agreement, which delegates contract execution and administration functions to procuring agencies. Another commenter opposed the change, mistakenly thinking that such a change was inconsistent with the Partnership Agreements. Also included within the delegation of contract administration is the authority to exercise priced options and issue appropriate modifications. The previous regulation required contracting officers who issued modifications or exercised options on 8(a) contracts to notify SBA of these actions. Because there was no clear guidance as to when SBA must be notified, there was often a delay between the issuance of a modification (or exercise of an option) and notification being supplied to SBA. The proposed rule required contracting officers to submit copies of modifications and options to SBA within 10 days of their issuance or exercise. While several commenters supported the proposed change as requiring timely communication of options and modifications, others believed that the 10-day turnaround time was too short and burdensome. One commenter recommended that 10 business days be changed to 15 business days to be consistent with the Partnership Agreements. The final rule amends the provision to require a contracting officer to submit copies to SBA of all modifications and options exercised within 15 business days of their occurrence, or by another date agreed upon by SBA.

In addition, this rule adds clarifying language to § 124.510(b) to make it clear that the initial determination of whether a firm submitting an offer for an 8(a) contract will meet the applicable performance of work requirement is made by the procuring agency contracting officer. SBA may provide input if requested.

Changes to Joint Venture Requirements

The proposed rule made four amendments to the joint venture requirements contained in § 124.513(c)(3). Specifically, the amendments provided that (1) the 8(a) Participant(s) to an 8(a) joint venture must receive profits from the joint

venture commensurate with the work performed by the 8(a) Participant(s); (2) the 8(a) Participant(s) to a joint venture for an 8(a) contract must perform at least 40% of the work done by the joint venture; (3) where a joint venture has been established and approved by SBA for one 8(a) contract, a second or third 8(a) contract may be awarded to that joint venture provided an addendum to the joint venture agreement, setting forth the performance requirements on that second or third contract, is provided to and approved by SBA prior to contract award; and (4) each 8(a) firm that performs an 8(a) contract through a joint venture must report to SBA how the performance of work requirements (*i.e.,* that the joint venture performed at least 50% of the work of the contract and that the 8(a) participant to the joint venture performed at least 40% of the work done by the joint venture) were met on the contract. SBA received over 100 comments regarding the proposed changes to § 124.513, and will address the comments to each of the four proposals in turn.

First, the majority of commenters supported the proposal that 8(a) Participant(s) to an 8(a) joint venture must receive profits from the joint venture commensurate with the work they performed. Those in support believed that this provision makes sense in light of the change specifying that the 8(a) partner(s) to a joint venture must perform at least 40% of the work performed by the joint venture. In a situation where the joint venture performs 100% of the contract, 40% by an 8(a) Participant and 60% by a non-8(a) firm, these commenters believed that it was not reasonable for the 8(a) firm to receive 51% of the profits when it performed only 40% of the work. SBA continues to agree. SBA believes that requiring an 8(a) firm to receive 51% of the profits in all instances could discourage legitimate non-8(a) firms from participating as joint venture partners in the 8(a) BD program, or encourage creative accounting practices in which a significant amount of revenues flowing to a non-8(a) joint venture partner would be counted as costs to the contract instead of profits in order to meet the SBA requirement. SBA does not believe that either of those outcomes is positive. As such, this provision is retained in this final rule.

Second, the comments responding to the proposed rule requiring the 8(a) Participant(s) to a joint venture for an 8(a) contract to perform at least 40% of the work done by the joint venture were diverse. Many commenters supported the proposal as a reasonable implementation of the previous "significant portion" rule. Several commenters believed that 40% was not sufficient to ensure that 8(a) Participants received a significant benefit from the joint venture contract. Theses commenters believed that a 50% performance requirement for the 8(a) partner(s) to a joint venture would more likely result in 8(a) partners receiving a significant benefit from the joint venture contract. Conversely, several other commenters opposed any objective measure, believing that the "significant portion" language was more appropriate because a suitable portion for an 8(a) firm to perform will vary based on the type and size of the project. These commenters believed the "significant portion" approach provided needed flexibility and was preferred to the proposed amendment. SBA believes that the rule requiring an 8(a) Participant to a joint venture to perform a significant portion of the work, without identifying a specific percentage, did not provide sufficient guidance to 8(a) firms and contracting officers as to what was expected of those firms. In addition, it allowed non-sophisticated 8(a) firms to be taken advantage of by certain non-8(a) joint venture partners. SBA believes that the best way to ensure that the 8(a) partners to a joint venture gain valuable experience from the joint venture is to require the 8(a) partners to perform a specific percentage of work. SBA does not agree with the commenter recommending that the 8(a) partner(s) perform at least 50% of the work done by the joint venture. The fundamental reason to have a joint venture is because one firm cannot act as prime and perform the contract by itself. Where an 8(a) contract is awarded to an 8(a) Participant directly (and there is no joint venture) the 8(a) firm must meet the performance of work requirement (*i.e.,* generally 50%) with its own work force. If SBA required the 8(a) partner to a joint venture to perform at least 50% of the work of the joint venture and the joint venture intended to perform the entire contract itself, then the 8(a) firm would be in the same position it would be in if it did not have a joint venture; it would be required to perform 50% of the entire contract. There would be no benefit to having a joint venture. As such, SBA continues to believe that the proposed 40% makes the most sense. It ensures that the 8(a) partners perform a significant amount of work, but also recognizes that 8(a) firms in a joint venture cannot generally accomplish the task by themselves. Thus, it provides some needed flexibility.

The final rule makes a distinction between populated and unpopulated joint ventures in terms of the performance of work requirement. For a populated joint venture, the requirement that the 8(a) partner must perform at least 40% of the work done by the joint venture may not always make sense. Where the joint venture is populated with one administrative person, then it continues to make sense that the 8(a) partner must perform at least 40% of the work done by the aggregate of the joint venture partners. However, where the joint venture itself hires the individuals necessary to perform the contract, the work of the joint venture will be done by the joint venture entity itself. An 8(a) partner to such a joint venture must demonstrate clearly how it will benefit or otherwise develop its business from the joint venture relationship. Where an 8(a) Participant cannot clearly demonstrate the benefits it will receive, SBA will not approve the joint venture. It may be easier for an 8(a) Participant to show that it will perform 40% of the work of an unpopulated joint venture (or 40% of a joint venture populated with administrative personnel only) than it will to demonstrate that it will substantially benefit from the work done by a populated joint venture.

Third, SBA received five comments responding to the proposal to clarify that once a joint venture is approved by SBA for one contract the 8(a) Participant need only supply an addendum to the joint venture agreement, setting forth the performance requirements on that second or third contract, for SBA approval. The commenters supported this change, but three commenters asked for further amplification to clarify that SBA's approval of the addendums for a second and third contract under the joint venture consisted only of SBA reviewing the work to be done under those two additional contracts and not a repeat of the structure of the joint venture for every contract. They stressed that this approach would reduce costs and increase efficiency. It was always SBA's intent to review only the addendums to the joint venture for the additional contracts to be awarded under the joint venture. As such, the final rule adds clarifying language to accomplish this result.

Fourth, SBA received two comments supporting the proposal to require each 8(a) firm that performs an 8(a) contract through a joint venture to report to SBA how the performance of work requirements were met on the contract. SBA believes that this requirement is needed to reinforce the performance of work requirements. Several audits performed by SBA's OIG have revealed that the performance of work

requirements are not always met. SBA needs to know when and why the requirements are not met. This could affect the firm's future responsibility to perform additional contracts and, depending upon the circumstance, could be cause for termination from the 8(a) BD program.

Sole Source Limits for NHO-Owned Concerns

Section 124.519 generally imposes limits to the amount of 8(a) contract dollars a Participant may receive on a sole source basis. The current rule exempts ANC and Tribally owned concerns from the limitations set forth in the rule. The proposed rule added NHO-owned concerns to the list of 8(a) concerns exempted from the limitations. SBA believes that all three of these types of firms should be treated consistently, and the failure to include NHO-owned concerns in the exemption in the current regulation was an inadvertent omission. SBA received 31 comments in response to this proposal. The comments overwhelmingly supported exempting NHOs from the sole source limitations. Only one commenter opposed the change (and that commenter believed that firms owned by Tribes and ANCs should also not have a sole source exemption) and one responded that it was "neutral" to the proposed change. All others commenting on the proposal supported it. One commenter supported the inclusion of NHOs and suggested that all 8(a) firms should be exempt from sole source dollar limits. SBA believes that the exemption that allows firms owned by Tribes, ANCs and NHOs to receive sole source 8(a) contracts even where the firm has received 8(a) contracts totaling in excess of the identified limitations is consistent with the statutory authority that permits these firms to be awarded sole source 8(a) contracts above the competitive threshold amounts. That statutory authority does not appear to limit sole source awards to firms owned by Tribes, ANCs or, with respect to DOD contracts, NHOs in any way. SBA believes that any regulatory provision that limits sole source awards to firms owned by these entities could be inconsistent with that statutory authority. No other firms have that statutory authority. Thus, it makes sense to SBA to allow only firms owned by Tribes, ANCs and NHOs to receive sole source 8(a) awards in excess of the limitations set forth in § 124.519. A few commenters suggested that option years should not be included in the calculations for the total contract value because option year funding is not guaranteed. SBA did not propose a change as to how 8(a) contracts should be counted in determining whether a firm has reached the threshold above which it may not receive additional sole source 8(a) awards. As such, this recommendation is beyond this rulemaking, and SBA does not change the provision in this final rule.

The proposed rule also changed the official authorized to waive the requirement prohibiting a Participant from receiving sole source 8(a) contracts in excess of the dollar amount set forth in § 124.519 from the SBA Administrator to the AA/BD. SBA received no comments to this proposed change. As such, SBA adopts that change in this final rule.

Changes to Mentor/Protégé Program

The proposed rule made several changes to § 124.520, governing SBA's mentor/protégé program. The proposed changes to this section generated a great deal of interest and comment. SBA received 206 separate comments to the various proposed revisions to § 124.520.

The rule would specifically require that assistance to be provided through a mentor/protégé relationship be tied to the protégé firm's SBA-approved business plan. Although SBA believed that this was implicit in the current regulations, SBA thought that it was important to reinforce that the mentor/protégé program is but one tool that can be used to help the business development of 8(a) Participants in accordance with their business plans. SBA received two comments supporting this change as a logical clarification and one comment opposing it as not allowing sufficient flexibility. The commenter who opposed the clarification noted that circumstances change quickly in the beginning phases of 8(a) program participation and new opportunities may not be included within a firm's business plan. In such a case, a firm may not be eligible for the mentor/protégé program because its business plan did not reflect its new vision. SBA believes that a firm's business plan is an ever-evolving document. At each annual review a firm may adjust its business plan to account for changed circumstances. As long as a firm makes the necessary adjustments at each annual review, its business plan should be current and the assistance to be provided through a proposed mentor/protégé agreement should be consistent with and tied to the business plan. As such, the final rule adopts the language contained in the proposed rule.

The proposed rule made several changes to requirements relating to mentors. First, while stating that a mentor would generally have one protégé firm, the proposed rule amended § 124.520(b)(2) to limit the number of protégés any mentor could have to three. SBA proposed this rule to prevent mentor firms from being able to take advantage of the program by collecting protégés in order to benefit from 8(a) contracts. SBA received comments both supporting and opposing the provision. The majority of comments believed the provision limiting mentors to having three protégé firms at a time was reasonable. Commenters agreed that allowing a mentor to have an unlimited number of protégé firms could permit a mentor to unduly benefit from the 8(a) program. In addition, one commenter believed the limitation to be reasonable because it ensures that 8(a) firms receive more individualized attention and assistance from their mentor. Several of these commenters, however, recommended that the rule more clearly provide that the limitation is not an absolute limit, but only a limit on the number of protégés a mentor can have at a time. Those opposing the provision feared that limiting the number of protégés a mentor could have would hurt the availability of mentors. To date, SBA has generally permitted a mentor to have one protégé firm, and in some cases two protégé firms. SBA has not heard that there has been a scarcity of mentors or that potential protégé firms could not find suitable mentor firms. This rule would expand the number of protégés a mentor could have to three. Thus, the rule should actually increase the availability of mentors, not curtail it. SBA did not intend this provision to be an absolute limit (*i.e.,* a total of three protégé firms), but rather that it could not have more than three at any point in time. SBA believes that the proposed language states that clearly and that no further change is necessary to capture its intent.

Second, the proposed rule amended § 124.520(b)(3) to allow a firm seeking to be a mentor to submit Federal income tax returns or audited financial statements, including any notes, or other evidence from the mentor in order to demonstrate the firm's favorable financial health. The previous requirement that a proposed mentor must submit Federal tax returns in all instances had proven to be impracticable, particularly in the case of very large firms. The proposed rule allowed a proposed mentor to submit Federal tax returns, but also allowed it to demonstrate its favorable financial health by other means, including submitting audited financial statements or in the case of publicly traded

concerns the filings required by the Securities and Exchange Commission (SEC). SBA received one comment on this proposed change. The commenter supported the change, believing that it provided needed flexibility. The final rule adopts the proposed language.

The supplemental information to the proposed rule advised that SBA was considering making a change to § 124.520(b) to specifically allow non-profit business entities to be mentors, and sought public comment on this issue. Sixteen commenters supported allowing non-profit entities to serve as mentors. These commenters believed that expanding the mentor/protégé program to include well-managed non-profit corporations to serve as mentors would increase the pool of good mentors and the scope of the program. A few of these commenters also believed that a non-profit mentor could benefit a protégé firm by providing developmental assistance to the protégé in the same way as a for-profit could. One commenter opposed non-profit mentors, believing that non-profits could not provide the same assistance because they have not actively participated in the Federal marketplace. Because the commenters overwhelmingly supported allowing non-profit entities to be mentors, the final rule amends § 124.520(b) to specifically allow non-profit business entities to be mentors. This authority merely gives firms seeking to be protégés an additional avenue to find mentors that meet their needs. If a firm, like the one commenter opposing allowing non-profits to be mentors, does not believe a non-profit entity can supply it with needed developmental assistance, that firm would not enter a mentor/protégé relationship with a non-profit. However, another firm that sees a benefit to such a relationship will now be able to have such a relationship.

The proposed rule added clarifying language to § 124.520(c)(2) to make it clear that the benefits derived from the mentor/protégé relationship end once the protégé firm graduates from or otherwise leaves the 8(a) BD program. SBA wanted to specifically make clear that the exclusion from affiliation enjoyed by joint ventures between protégés and their mentors generally ends when the protégé leaves the 8(a) BD program. SBA received 16 comments in response to this proposal. All 16 supported the change. Most of the commenters, however, also recommended that SBA further clarify the provision to specify that any contract awarded to a joint venture between a protégé and its mentor prior to the termination of the mentor/protégé relationship does not automatically end when the mentor/protégé relationship ends, and that the parties remain obligated to perform the contract to completion. SBA believes that to be fundamental. As with any contract awarded to any firm, contract performance continues. If a firm graduates or otherwise leaves the 8(a) BD program, the firm is bound to continue performance on any 8(a) contracts previously awarded. That is the same for any contract awarded to a joint venture, including joint ventures between a protégé and its mentor. If a protégé firm graduates from the 8(a) BD program, it would no longer be eligible for the exclusion from affiliation that is available to current protégé firms and their mentors for future contracts, but its leaving the 8(a) BD program does not affect the status of previously awarded contracts. In addition, the status of the joint venture as a small business for a previously awarded contract does not change where the protégé firm graduates or otherwise leaves the 8(a) BD program. Upon further reflection, SBA believes that this provision should be moved from § 124.520(c), which identifies the requirements for protégé firms, to § 124.520(d), which addresses the benefits available to mentor/protégé relationships. The final rule does that, and also adds clarifying language to clear up any confusion regarding what happens to previously awarded contracts.

The proposed rule amended § 124.520(c)(3) to allow a protégé to have a second mentor where it demonstrates that the second relationship pertains to an unrelated, secondary NAICS code, the first mentor does not possess the specific expertise that is the subject of the mentor/protégé agreement with the second mentor, and the two relationships will not compete or otherwise conflict with each other. All 20 comments SBA received in response to this provision supported the proposed change. The commenters believed that this will allow protégé firms to develop expertise in different areas more quickly than if they only had one mentor, and will more fully promote the business development purposes of the 8(a) BD program. One commenter recommended that a firm should be able to have a second mentor in all instances where the mentor is in a different NAICS code. SBA believes that NAICS codes alone do not adequately determine whether a firm is in a different or related industry. As commenters have pointed out in addressing other provisions of the proposed rule, many times contracting officers classify the same work in different NAICS codes. Work done in different NAICS codes could relate to one another and two such mentor/protégé relationships could conflict with each other. SBA believes that requiring a protégé to demonstrate that the second mentor possesses specific expertise that the first does not have and that the two relationships will not compete or otherwise conflict with each other provide important safeguards to ensuring that protégés benefit from their mentor/protégé relationships. As such, the final rule adopts the proposed language.

The proposed rule also added a provision to preclude 8(a) firms from being mentors and protégés at the same time. Under the amendment, 8(a) concern must give up its status as a protégé if it becomes a mentor. SBA received one comment supporting this provision as reasonable and two comments opposing it. The comments opposing the rule believed that a firm could act as a mentor and assist a firm less sophisticated than it is and still qualify as a protégé itself to obtain assistance in more highly developed areas from a larger, more diversified firm. SBA disagrees. If a firm was permitted to be both a protégé and a mentor at the same time, SBA believes that a conflict could easily develop between the two relationships. It is possible that there would be procurements that both protégé firms would want to compete for, which could cause friction between the parties. In the end, it is likely that the smaller protégé firm would not get the full benefits of a mentor/protégé relationship. As such, the final rule retains the prohibition against a firm being a protégé and mentor at the same time.

SBA received 27 comments in response to proposed § 124.520(c)(5), which prohibited SBA from approving a mentor/protégé agreement if the proposed protégé firm has less than one year remaining in its program term. Three commenters supported the rule as proposed. One commenter thought that mentor/protégé agreements should not be permitted in the last 18 months of a firm's program term. The remainder of the commenters believed that the one-year limit was too harsh. Many of these commenters believed that SBA approval should be based upon the particular agreement, and whether it provided for meaningful developmental support to the protégé firm, and not on the time remaining in the program. Other commenters believed that a shorter length of time to disallow new mentor/protégé relationships was more

appropriate. One commenter recommended nine months, three commenters recommended six months, and three commenters recommended three months. Several commenters were concerned that because the process for SBA to approve a mentor/protégé agreement may take a long time, an agreement might be denied because of SBA's inaction. As stated in the supplemental information to the proposed rule, SBA was concerned that mentor/protégé relationships approved within one year of the end of a firm's program term would not provide the agreed upon assistance to the protégé firm. An agreement may appear valid on its face, but SBA's oversight of the firm and what assistance it actually obtains ends when the firm leaves the program. SBA cannot ensure that the protégé ever receives the agreed upon assistance. In many of the cases SBA has seen where a mentor/protégé agreement is submitted within the last year of a firm's program term, the proposed mentor is looking to benefit from the 8(a) BD program through the award of an immediate joint venture contract. After the contract award, there are no assurances that the protégé ever receives developmental assistance. SBA also understands, however, that certain firms nearing the end of their program terms could benefit from mentor/protégé relationships if they in fact received the agreed upon assistance. Because this rule imposes new consequences for a mentor that has not provided the assistance set forth in its mentor/protégé agreement, SBA believes that the one year restriction may be too limiting. As such, this final rule prohibits SBA from approving a mentor/protégé agreement if the proposed protégé firm has less than six months remaining in its program term.

The proposed rule amended § 124.520(d)(1) to allow a joint venture between a mentor and protégé to be small for Federal subcontracts. All nine comments responding to this provision supported allowing the exclusion from affiliation for subcontracts. One commenter thought the exclusion from affiliation should be limited only to the unique contracting situation of the Department of Energy, which has a significant amount of contracting activity go through government owned contractor operated (GOCO) facilities, and the contracts between the GOCO and a contractor technically are government subcontracts for which the exclusion from affiliation for a mentor/protégé joint venture did not previously apply. The other eight commenters thought that the exclusion from affiliation should be applied equally to all subcontracts of Federal prime contracts. These commenters thought that it made no sense to distinguish between types of subcontracts. They viewed allowing the exclusion from affiliation on all subcontracts as another business development tool. The final rule retains the exclusion from affiliation for all Federal subcontracts.

The proposed rule also clarified that a mentor/protégé agreement must be approved by SBA before the two firms can submit an offer as a joint venture to take advantage of the special exception to the size requirements for that procurement. Under SBA's size regulations, size is determined at a fixed point in time (*i.e.,* as of the date of the initial offer, including price). *See* 13 CFR 121.504. If the entity submitting an offer is small as of that date, it will qualify as small for the procurement even if it grows to be other than small at the date of award. If the entity submitting an offer does not qualify as small as of the date it submits its initial offer, it cannot later come into compliance and qualify as small for that procurement. Thus, in order for a joint venture to be eligible as a small business, it must be small at the time it submits its offer including price. It seems obvious to SBA that if SBA has not yet approved a mentor/protégé agreement, a joint venture between proposed protégé and mentor firms is not entitled to receive the benefits of the 8(a) mentor/protégé program, including the exclusion from affiliation. SBA received no substantive comments on this provision, and it remains unchanged in this final rule.

In addition, the proposed rule added a provision making it clear that in order to receive the exclusion from affiliation for both 8(a) and non-8(a) procurements, the joint venture must comply with the requirements set forth in § 124.513(a). SBA received no comments on this proposal. It is SBA's view that in order to obtain a benefit derived from the 8(a) program (*i.e.,* the exclusion from affiliation for joint ventures between approved protégés and mentors), the same restrictions that are applicable to 8(a) contracts apply to non-8(a) contracts. SBA believes that it would not make sense for the requirement that the protégé firm perform 40% of the work performed by the joint venture not apply to small business set-aside contracts. The whole purpose of the mentor/protégé program is to help protégé firms develop so that they can better compete for future contracts on their own. If they are not required to perform a significant portion of or be the project manager on a contract, the development purposes of the mentor/protégé program would not be served. The final rule adopts the proposed language.

The proposed rule also clarified procedures for requesting reconsideration of SBA's decision to deny a proposed mentor/protégé agreement. No reconsideration process was authorized under previous regulations. Under the procedures, where SBA declines to approve a specific mentor/protégé agreement, the protégé may request the AA/BD to reconsider the Agency's initial decline decision by filing a request for reconsideration with its servicing SBA district office within 45 calendar days of receiving notice that its mentor/protégé agreement was declined. The protégé is then able to revise its mentor/protégé agreement to more fully detail the business development assistance that the mentor will provide and provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline. The proposed rule also provided that if the AA/BD declines to approve the mentor/protégé agreement on reconsideration, the 8(a) firm seeking to become a protégé could not submit a new mentor/protégé agreement with that same mentor for one year; it could, however, submit a proposed mentor/protégé agreement with a different proposed mentor at any time after the SBA's final decline decision. SBA received two comments responding to this proposal. While the comments supported authorizing a reconsideration process, they opposed the provision requiring a prospective protégé to wait one year after its mentor/protégé agreement was denied to submit a new mentor/protégé agreement with the same proposed mentor. The commenters viewed this proposal as a punitive measure that does not benefit any party involved. SBA agrees that requiring the same two parties to wait a year before submitting a new mentor/protégé agreement does not serve the business development purposes of the program. However, SBA continues to believe that some waiting period makes sense to ensure that the parties properly understand SBA's requirements and take some time to draft an agreement that meets those requirements. Thus, this final rule reduces the one-year waiting period for the same parties to submit a new mentor/protégé agreement to 60 calendar days.

The proposed rule also added a new § 124.520(h), which set forth consequences for a mentor that fails to provide the assistance it agreed to provide in its mentor/protégé

agreement. Where SBA determines that a mentor has not provided to the protégé firm the business development assistance set forth in its mentor/protégé agreement, SBA will afford the mentor an opportunity to respond. The response must explain why the assistance set forth in the mentor/protégé agreement has not been provided to date and must set forth a definitive plan as to when it will provide such assistance. Under the proposed rule, if the mentor fails to respond, does not supply adequate reasons for its failure to provide the agreed upon assistance, or does not set forth a definite plan to provide the assistance, SBA will recommend to the relevant procuring agency to issue a stop work order for each Federal contract for which the mentor and protégé are performing as a small business joint venture and received the exclusion from affiliation authorized by § 124.520(d)(1). SBA received over 50 comments responding to this proposal. Many commenters opposed the stop work order authority because they feared that it would harm protégé firms and discourage procuring agencies from awarding contracts to mentor/protégé joint ventures. Any stop work order issued under this section is intended to be temporary to encourage the mentor to come into compliance with its mentor/protégé agreement. SBA anticipates that it will be withdrawn when SBA is satisfied that the assistance has been or will be provided to the protégé. If the work is critical to and any delay in contract performance would harm the procuring activity, SBA may request that another Participant be substituted for the joint venture to continue performance. SBA continues to believe that some seemingly harsh measure must be imposed to ensure that protégé firms obtain the business development assistance promised to them in their various mentor/protégé agreements. SBA has no other way to compel mentors to comply with their mentor/protégé agreements. Without such authority, SBA fears that protégé firms will continue to be taken advantage of by firms who merely want to get access to 8(a) contracts that they would not otherwise be able to do without the mentor/protégé relationship. SBA understands the concerns raised by commenters who view a stop work order as something that will hurt protégé firms in addition to not obtaining the agreed-upon development assistance through their mentor/protégé agreements. However, SBA believes that this is a valuable tool to maintain the integrity of small business programs. Large business mentors that are performing significant portions of 8(a) and small business contracts that they otherwise would not be eligible for should not be able to continue to benefit from such contracts when they are not meeting SBA's requirements. Instead of providing that SBA will recommend the issuance of a stop work order in every case where the mentor does not supply adequate reasons for its failure to provide the agreed upon assistance or does not set forth a definite plan to provide the assistance, the final rule gives SBA the authority to recommend a stop work order, but makes it discretionary. SBA will look at the circumstances in each case before deciding whether to make such a recommendation. In addition, the final rule adds further language to attempt to protect protégé firms. Specifically, the final rule provides that where a protégé firm is able to independently complete performance of any contract awarded to a joint venture between it and its mentor, SBA may authorize a substitution of the protégé firm for the joint venture. This would allow the protégé firm to continue to perform the contract without the mentor.

The proposed rule also authorized SBA to terminate a mentor/protégé agreement where the mentor has failed to provide the agreed upon developmental assistance, and render the mentor firm ineligible to again act as a mentor for a period of two years from the date SBA terminates the mentor/protégé agreement. If SBA believes that the mentor entered into the mentor/protégé relationship solely to obtain one or more Federal contracts as a joint venture partner with the protégé and had no intent to provide developmental assistance to the protégé, SBA could initiate proceedings to debar the mentor from Federal contracting. Similarly, if SBA believes that a protégé firm entered a mentor/protégé agreement in order to be awarded joint venture contracts with its mentor knowing that it would bring little or no value to the joint venture, SBA could initiate proceedings to terminate the firm from 8(a) participation or debar the firm from Federal contracting. Several commenters believed that a firm should be forever barred from again acting as a mentor if it failed to provide the agreed upon developmental assistance to the protégé firm in one mentor/protégé relationship. SBA takes seriously a mentor's failure to live up to its mentor/protégé agreement, particularly where the mentor has benefited from the 8(a) BD program through joint venture contracts. However, SBA believes that a permanent ban is too restrictive, and that two years is an appropriate penalty. If after two years the firm seeks to be a mentor for another 8(a) Participant, SBA would require the firm to demonstrate when and how it will provide developmental assistance to the protégé firm, and it may not approve any joint venture between the mentor and protégé until the firms demonstrate that the protégé has already received some developmental assistance.

Reporting Requirement and Submission of Financial Statements

The proposed rule amended § 124.601, which addresses a statutorily required reporting requirement for 8(a) Participants. Small business concerns participating in the 8(a) BD program are required by statute to semiannually submit a written report to their assigned BDS that includes a listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such participant in obtaining a Federal contract. The previous regulation incorrectly required this report to be submitted annually. This change is needed in order to bring the regulation into compliance with the statutory requirement. SBA received several comments supporting this change. Two commenters believed that semi-annual reporting will add an unnecessary burden to 8(a) Participants. Again, SBA is merely changing the regulation to coincide with statutory authority.

The proposed rule also amended § 124.602 regarding the submission of audited and reviewed financial statements. SBA proposed to raise the level above which audited financial statements are required from Participants with gross annual receipts of more than $5,000,000 to Participants with gross annual receipts of more than $10,000,000. The proposed rule required reviewed financial statements of all Participants with gross annual receipts between $2,000,000 and $10,000,000, instead of between $1,000,000 and $5,000,000. SBA received more than 40 comments supporting the changes in the levels of gross annual receipts that require a firm to submit audited and reviewed financial statements. One commenter recommended that audited financial statements be required only of firms with more than $15,000,000 in gross annual receipts, and another commenter recommended that reviewed financial statements be required only for firms with gross annual receipts between $5,000,000 and $10,000,000. Because

SBA did not receive any other comments questioning the levels for audited and reviewed financial statements and the vast majority of comments supported the changes, SBA believes that the proposed levels are appropriate. Several commenters recommended that SBA allow for a transition for firms who for the first time exceed $10,000,000 in gross annual receipts and who would, therefore, be required to submit audited financial statements for the first time. These commenters believed that it would be difficult for a firm to provide audited financial statements in the first year it exceeds the $10,000,000 receipts figure. This is because audited income and cash flow statements generally require an audited balance sheet for both the beginning and the end of the period covered by the income and cash flow statements. One commenter noted that it is technically difficult for an auditor to recreate an audited balance sheet for a prior period and costly for the client company. For example, if a company has inventories and accounts receivable, the commenter observed that Generally Accepted Auditing Standards would generally require that the auditors observe the taking of the physical inventory and confirm the receivables with the debtors. The commenter believed that it is challenging and expensive for the auditor to carry out these tasks a year later if the client company discovers that its sales have increased to the point that an audit will be required. In response to these comments, SBA has added a provision to the regulations allowing 8(a) Participants to provide an audited balance sheet for the first year an audit is required, with the income and cash flow statements receiving the level of service required for the previous year (review or none, depending on sales the year before the audit is required).

Additionally, during the Tribal consultations, two Tribal representatives believed that it was unduly expensive and burdensome for Tribally-owned firms to submit separate audited financial statements for each individual 8(a) Participant. They recommended that where an audited financial statement is required for one or more Tribally-owned firms, the firm be able to submit audited consolidated financial statements that include audited schedules for each 8(a) Participant. They understood that SBA needs separate financial information for each Participant to monitor 8(a) compliance, but believed that this information is already provided within the schedules which are attached to the consolidated financial statements. In addition, they felt that requiring a separate, stand alone audit for each 8(a) Participant would not provide additional, meaningful detail for the SBA, but would impose substantial costs on the Tribe, ANC, NHO, or CDC. SBA recognizes the unique nature of ANC, NHO, CDC and Tribal participation in the 8(a) BD program. Provided that consolidated financial statements contain audited schedules for each 8(a) Participant, SBA agrees that separate audited financial statements for each entity-owned 8(a) Participant are not necessary. As such, this final rule amends § 124.602 by adding a new paragraph (g) making it clear that SBA will accept audited consolidated financial statements that contain audited schedules for each 8(a) Participant. It will be up to each Participant how it wishes to meet the audited financial statements requirement. If there is only one 8(a) Participant that must submit an audited financial statement, it may make sense for that Participant to provide separate, individual audited financial statements. If there are two or more 8(a) Participants that must submit audited financial statements, or if it otherwise makes sense for the 8(a) Participant, the Participant may provide audited consolidated financial statements with audited schedules for each 8(a) Participant. Even if there is only one 8(a) Participant required to submit audited financial statements, it may make sense to provide consolidated financial statements with audited schedules where the audited consolidated statements with audited schedules already exists for other purposes and it would be an added cost to have audited financial statements of the one 8(a) Participant.

Several commenters also noted that the previous regulations authorize the appropriate SBA district director to waive the requirement for audited financial statements where good cause is shown, but do not authorize the district director to waive the requirement for reviewed financial statements in similar circumstances. These commenters recommended that the appropriate district director to waive the requirement for reviewed financial statements where good cause similar to that permitted to waive audited financial statements is shown. SBA agrees and has added such a waiver to § 124.602(b)(2). If a waiver is granted, the Participant would be permitted to submit a compilation statement instead of reviewed financial statements.

Finally, as noted above in the discussion under the heading *Changes Applying Specifically to Tribally-Owned Firm,* this final rule moves the proposed provision requiring each Participant owned by a Tribe, ANC, NHO or CDC to submit information demonstrating how its 8(a) participation has benefited the Tribal or native members and/or the Tribal, native or other community as part of its annual review submission from § 124.112(b)(8) to a new § 124.604. That section discusses the other changes made to that requirement in this rule.

Requirements Relating to SDBs

This rule amends § 124.1002, which defines what is an SDB. SBA first adds a provision to § 124.1002(d) to make it clear that the "other eligibility requirements" set forth in § 124.108 for 8(a) BD program participation do not apply to SDBs. As part of an SDB protest, SBA will merely be determining whether a concern is owned and controlled by one or more individuals who qualify as socially and economically disadvantaged. SBA will not consider whether the concern is a responsible business for the particular contract. As such, issues such as good character and failure to pay Federal financial obligations should not be part of SBA's determination as to whether a firm qualifies as an SDB.

This rule also adds a new paragraph to § 124.1002 to define full time management as it applies to the SDB program. Since the SDB program is a contracts program and not a business development program, and since there is no good policy reason to exclude part-time companies from the SDB program, SBA proposes to permit SDB owners to devote fewer than 40 hours per week to their SDB firms provided that the disadvantaged manager works for the firm during all the hours that the firm operates. For example, if a firm is in operation only 20 hours per week, the disadvantaged manager of the firm would be considered to devote full time to the firm if the individual was available and working for the firm during the 20 hours the firm was operating. This definition is not being extended to 8(a) firms as those firms are expected to operate 40 or more hours per week.

SBA received eight comments in response to the proposed changes and all but one supported the proposed changes to the SDB regulations. One commenter disagreed that SDB is not a business development program. SBA does not currently provide business development assistance to those firms that self certify their SDB status.

Finally, SBA amends § 124.1009, *Who decides disadvantaged status protests?*, clarifying that the AA/BD, or designee,

will determine whether the concern is disadvantaged. This change is required due to the recent suspension of SBA's receipt of applications for the SDB program. 73 FR 54881(September 23, 2008). SBA no longer processes applications for SDB certification and therefore no longer has the position Division Chief, Small Disadvantaged Business Certification and Eligibility.

Compliance with Executive Orders 12866, 12988, 13175, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35).

Executive Order 12866

OMB has determined that this rule is a "significant" regulatory action under Executive Order 12866. In the proposed rule, the SBA set forth its initial regulatory impact analysis, which addressed the following: Necessity of the regulation; alternative approaches to the proposed rule; and the potential benefits and costs of the regulation. The SBA did not receive any comment specifically addressing its regulatory impact analysis. However, numerous commenters agreed that the proposed changes were necessary and positive. Several commenters commended SBA's efforts to address certain program abuses and described the changes as a strong effort to improve the program for legitimate 8(a) BD program participants. In addition, the SBA received numerous comments supporting its proposed approaches to the specific provision changes. The specific comments on these approaches are discussed above. Although SBA received comments not in favor of specific provisions in the rule overall the comments generally supported the proposed changes and recognized SBA's requirements and effort to remove confusion. Those provisions that received unanimous opposition were removed or amended in consideration of the well-founded comments received. SBA also considered a number of alternatives to the proposed rule and requested comments from the public concerning those alternatives. The comments on the alternative approaches and SBA's response are also discussed above.

For these reasons, and those set forth in the preamble, the SBA adopts as final its initial regulatory impact analysis.

Executive Order 12988

This action meets applicable standards set forth in Sec. Sec. 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132, Federalism. 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 the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13175, Tribal Summary Impact Statement

For the purposes of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the SBA's General Counsel has determined that the requirements of this order have been met in a meaningful and timely manner. This rule complies with the standards set forth in the Executive Order and SBA has provided the Tribal officials with an opportunity to provide meaningful and timely input on regulatory policies that have a Tribal implications.

In drafting this final rule, SBA consulted with representatives of Alaska Native Corporations (ANCs) and Indian Tribes, both informally and formally, pursuant to Executive Order 13175, primarily to discuss potential changes to the mentor/protégé requirements. SBA met informally with Tribal and ANC representatives in Washington, DC on July 19, 2007, and more formally in Fairbanks, Alaska on October 24, 2007, 72 FR 57889, and in Denver, Colorado on November 11, 2007, 72 FR 60702. In addition, SBA conducted Tribal consultations on December 16, 2009 in Seattle, Washington, on January 14, 2010 in Albuquerque, New Mexico, and on January 27, 2010 for Anchorage, Alaska in Vienna, Virginia via a video teleconference with representatives located in Anchorage, Alaska.

A vast majority of the comments received from these discussions were concerned that SBA would overreact to negative publicity regarding one or two 8(a) Participants and would change the mentor/protégé program in a way that would take away an important business development tool to Tribal and ANC-owned firms. Many Tribal representatives discussed the importance of the 8(a) BD program to the Tribal and ANC communities. They stressed that the 8(a) BD program works, providing the government with a contracting option that is efficient and cost effective while permitting the government to achieve its policy of supporting disadvantaged small businesses and providing benefits to some of the most underemployed people in America. They explained that they have been trying to dispel program misperceptions caused by unsubstantiated allegations of misconduct and abuse, when they would rather be devoting their efforts to business and community development. Several Tribal representatives felt that relatively few Tribes have realized the benefits of the mentor/protégé component of the 8(a) program, and were concerned that SBA would be closing this business development option just as they are getting to the point where they would use it. Representatives also were concerned that SBA would propose changes that would restrict the participation of mentors in the program. That is not SBA's intent. SBA also believes that the 8(a) BD program is a much-needed and beneficial program, and that the Tribal and ANC component of the program serves a valuable economic and community development purpose in addition to its business development purpose. It is not SBA's intent to shut down any component of the 8(a) program that truly assists the development of any small disadvantaged businesses. Specifically, SBA is not proposing to close this business development option to Tribes and ANCs as some Tribal representatives were concerned. SBA does not seek to make it more difficult for Tribally-owned and ANC-owned firms to participate in the 8(a) BD program, and merely looks for ways to help ensure that the benefits of the program flow to those who are truly eligible to participate. SBA has carefully reviewed both the testimony given at the Tribal consultation meetings and the formal comments submitted in response thereto. SBA believes the final rule, as drafted, considered the comments and testimony received from the Native communities impacted by this rule change. Additionally, SBA has delayed the effective date for certain provisions for a period of six months so that additional discussions may take place with the Native communities regarding the Annual Review reporting requirements and how best to implement.

Regulatory Flexibility Act

The SBA set forth an Initial Regulatory Flexibility Analysis (IRFA) addressing the impact of the proposed rule in accordance with section 603, title 5, of the United States Code. The IRFA examined the objectives and legal basis for this proposed rule; the kind and number of small entities that may

be affected; the projected recordkeeping, reporting, and other requirements; whether there are any Federal rules that may duplicate, overlap, or conflict with this proposed rule; and whether there are any significant alternatives to this proposed rule.

SBA identified six specific provisions of the proposed rule which it anticipated may have a significant impact on a substantial number of small businesses. Those provisions were: (1) The provisions relating to joint ventures between protégé firms and their SBA-approved mentors; (2) the requirement that the disadvantaged manager of an 8(a) applicant or Participant must reside in the United States and spend part of every month physically present at the primary offices of the applicant or Participant; (3) the provision excluding qualified individual retirement accounts from an individual's net worth in determining economic disadvantage; (4) the provisions establishing objective criteria for determining economic disadvantage in terms of income and total assets; (5) the provision requiring SBA to early graduate a firm from the 8(a) program if the firm becomes large for the size standard corresponding to its primary NAICS code; and (6) the provisions relating to what size 8(a) Participants must annually submit either audited or reviewed financial statements to SBA.

SBA received a couple of comments directly addressing the IRFA and several comments discussing provisions of the proposed rule that addressed included subjects addressed in the IRFA. The SBA received a comment that correctly pointed out that the statement that the rule imposes no additional reporting requirement or recordkeeping requirements was inaccurate. This same commenter correctly pointed out that the Annual Review reporting requirement for Tribes is new. Several comments stated that SBA should consider the costs and burdens of the reporting and recordkeeping requirements for the Native owned firms and the consistency of the data.

SBA notes that Annual Review reporting and recordkeeping requirements are necessary to reduce fraud in the program and to ensure that the intended beneficiaries receive the benefits of the program and only eligible businesses participate. SBA's rule adopts methods and processes aimed at meeting these objectives, while also minimizing, as much as possible, the burden on small businesses.

In addition to public comments, the Office of Advocacy (Advocacy), an independent office within SBA, also provided comments on the proposed rule. In the comments Advocacy commends SBA for its efforts in making necessary revisions to the 8(a) BD program rules, moving some of the internal practices to a regulatory framework, and recognizing cost burdens that 8(a) companies encounter in complying with the program requirements for audited financial statements. Advocacy supports SBA's changes to the economic disadvantage analysis and treatment of IRAs and applauded SBA's efforts to seek broad public input in this rulemaking. In addition to noting the positive aspects of the proposed rule, Advocacy also expressed concern with certain of the proposed changes which SBA addresses here.

Residency Requirement

In response to the comments SBA received regarding the physical presence requirement and as explained in the preamble above, SBA has removed the requirement from the final rule.

Program Graduation

Although Public Law 95–507 was the enabling statute for the 8(a) BD program, Public Law 100–656 specifically required graduation based on the economic disadvantaged condition only. *See* section 8(a)(6)(C)(ii) of the Small Business Act. Because the final rule as written is consistent with the Small Business Act as amended, SBA adopts the final rule.

Administration of 8(a) Contracts

SBA believes that Advocacy has misinterpreted the delegation of contract administration with the delegation of program administration. SBA does not delegate the administration of the 8(a) BD program to other agencies. The changes to § 124.512 address the delegation of contract administration, not program administration as suggested by Advocacy in its comments. SBA has historically delegated contract administration and contract execution to procuring agencies, but has maintained program administration responsibilities and the setting of policy with regard to the 8(a) BD program. Additionally, the FAR specifically addresses the delegation of contract execution authority from SBA to other procuring activities.

Nothing has changed with regard to the assistance provided by SBA to 8(a) BD program Participants as delivered through the Business Development Specialist serving as advocates and administering assistance.

Requirements Relating to SDBs

Advocacy objects to the change to allow "part time companies" to participate in the SDB program and suggests that SBA does not have the legal authority to change its definition of small business concern and the legislative history of the socially and economic disadvantaged programs does not seem to support or encourage the participation of part-time business owners. Although true for the 8(a) program (eligibility is based on the full time devotion of the disadvantaged individual(s) upon whom eligibility is based) for Small Disadvantaged Businesses the requirement is for an award to a small business concern owned and controlled by socially and economically disadvantaged individuals. SBA defines a small business as a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. *See* 13 CFR 121.105(a). The definition does not have a full time devotion requirement, consequently SBA believes a firm run part time by one or more socially and economically disadvantaged individuals meets this definition. If an agency determines that the SDB has the capability to perform a subcontract and that firm is owned and controlled by a socially and economically disadvantaged individual who manages the firm on a part time basis, in the SDB context, SBA believes the firm is eligible assuming the other eligibility criteria for SDB are met.

In response to Advocacy's recommendation that SBA conduct an economic impact analysis based on the concerns it raised, as addressed above, SBA does not believe it is necessary because in one instance SBA has made the recommended change and as for the remaining comments, Advocacy's interpretation and suggested results are not consistent with the actual application of the rule.

For these reasons, and the reasons set forth in the preamble, the SBA adopts the IRFA as final.

Finally, Advocacy recommended that SBA provide the public with an opportunity to review the comments from the regional hearings. SBA has summarized the comments received on the listening tour and has audio tapes of those hearing, but no transcripts. Someone seeking to listen to the tapes of one or more hearings may request SBA for such access.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that the rule imposes new reporting and recordkeeping requirements. Specifically, the final rule imposes a new requirement on each Participant owned by a Tribe, ANC, NHO, and CDC to submit information to SBA that evidences how participation in the 8(a) program has benefited the Tribal or native members and/or communities. This provision, as proposed in § 124.112(b)(8), required each Participant to report how its participation in the 8(a) BD program benefited the Tribal or native members and/or communities. In response to public comments on this requirement, SBA has decided that it would be less onerous on the 8(a) firms if the reporting requirement was at the parent corporation level as opposed to the individual firm level. In addition, because 124.112 relates to eligibility criteria and not reporting requirements, SBA has relocated this new requirement to a new § 124.604, to avoid any confusion as to the purpose for the information requested.

As discussed above, several commenters recommended that SBA delay implementation of this reporting requirement to allow affected firms additional time to gather and synthesize the data and for the Agency to analyze the requirement further. In response SBA has decided to delay implementation for a minimum of six months from the effective date of this final rule.

Although this reporting requirement was identified in the proposed rule, SBA unintentionally stated that there were no additional reporting or recordkeeping requirement resulting from this rule, and further did not submit the information collection to OMB for review and approval as required by the Paperwork Reduction Act, and OMB information collection regulations. In order to meet these requirements, SBA will publish a notice in the **Federal Register** to request comments on, among other things, the need for the information, who is expected to respond to the request for the information, and the estimated hour and cost burden on these respondents as a result of the requirement. This action will not impact implementation of the other aspects of the rule, since, in any event, implementation of the reporting requirement has been delayed for six months.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 124

Administrative practice and procedures, Government procurement, Hawaiian natives, Indians—business and finance, Minority businesses, Reporting and recordkeeping requirements, Tribally-owned concerns, Technical assistance.

For the reasons set forth above, the Small Business Administration amends parts 121 and 124 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644 and 662(5); and, Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592.

■ 2. Amend § 121.103 as follows:
■ a. Revise paragraphs (b)(3) and (b)(6);
■ b. Revise paragraph (h) introductory text; and
■ c. Revise paragraph (h)(3)(iii).

§ 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(3) Business concerns which are part of an SBA approved pool of concerns for a joint program of research and development or for defense production as authorized by the Small Business Act are not affiliates of one another because of the pool.

* * * * *

(6) An 8(a) BD Participant that has an SBA-approved mentor/protégé agreement is not affiliated with a mentor firm solely because the protégé firm receives assistance from the mentor under the agreement. Similarly, a protégé firm is not affiliated with its mentor solely because the protégé firm receives assistance from the mentor under a Federal Mentor-Protégé program where an exception to affiliation is specifically authorized by statute or by SBA under the procedures set forth in § 121.903. Affiliation may be found in either case for other reasons.

* * * * *

(h) *Affiliation based on joint ventures.* A joint venture is an association of individuals and/or concerns with interests in any degree or proportion consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. This means that a specific joint venture entity generally may not be awarded more than three contracts over a two year period, starting from the date of the award of the first contract, without the partners to the joint venture being deemed affiliated for all purposes. Once a joint venture receives one contract, SBA will determine compliance with the three awards in two years rule for future awards as of the date of initial offer including price. As such, an individual joint venture may be awarded more than three contracts without SBA finding general affiliation between the joint venture partners where the joint venture had received two or fewer contracts as of the date it submitted one or more additional offers which thereafter result in one or more additional contract awards. The same two (or more) entities may create additional joint ventures, and each new joint venture entity may be awarded up to three contracts in accordance with this section. At some point, however, such a longstanding inter-relationship or contractual dependence between the same joint venture partners will lead to a finding of general affiliation between and among them. For purposes of this provision and in order to facilitate tracking of the number of contract awards made to a joint venture, a joint venture must be in writing and must do business under its own name, and it may (but need not) be in the form of a separate legal entity, and if it is a separate legal entity it may (but need not) be populated (*i.e.,* have its own separate employees). SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(4) of this section.

Example 1 to paragraph (h) introductory text. Joint Venture AB has received two contracts. On April 2, Joint Venture AB submits an offer for Solicitation 1. On June 6, Joint Venture AB submits an offer for Solicitation 2. On July 13, Joint Venture AB submits an offer for Solicitation 3. In September, Joint Venture AB is found to be the apparent successful offeror for all three solicitations. Even though the award of the three contracts would give Joint Venture AB

a total of five contract awards, it could receive those awards without causing general affiliation between its joint venture partners because Joint Venture AB had not yet received three contract awards as of the dates of the offers for each of three solicitations at issue.

Example 2 to paragraph (h) introductory text. Joint Venture XY receives a contract on December 19, year 1. It may receive two additional contracts through December 19, year 3. On August 6, year 2, XY receives a second contract. It receives no other contract awards through December 19, year 3 and has submitted no additional offers prior to December 19, year 3. Because two years have passed since the date of the first contract award, after December 19, year 3, XY cannot receive an additional contract award. The individual parties to XY must form a new joint venture if they want to seek and be awarded additional contracts as a joint venture.

Example 3 to paragraph (h) introductory text. Joint Venture XY receives a contract on December 19, year 1. On May 22, year 2, XY submits an offer for Solicitation 1. On June 10, year 2, XY submits an offer for Solicitation 2. On June 19, year 2, XY receives a second contract responding to Solicitation 1. XY is not awarded a contract responding to Solicitation 2. On December 15, year 3, XY submits an offer for Solicitation 3. In January, XY is found to be the apparent successful offeror for Solicitation 3. XY is eligible for the contract award because compliance with the three awards in two years rule is determined as of the date of the initial offer including price, XY submitted its offer prior to December 19, year 3, and XY had not received three contract awards prior to its offer on December 15.

* * * * *

(3) * * *

(iii) Two firms approved by SBA to be a mentor and protégé under § 124.520 of these regulations may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in § 124.519 of these regulations. If the procurement is to be awarded through the 8(a) BD program, SBA must approve the joint venture pursuant to § 124.513. If the procurement is to be awarded other than through the 8(a) BD program (*e.g.,* small business set aside, HUBZone set aside), SBA need not approve the joint venture prior to award, but if the size status of the joint venture is protested, the provisions of §§ 124.513(c) and (d) will apply. This means that the joint venture must meet the requirements of §§ 124.513(c) and (d) in order to receive the exception to affiliation authorized by this paragraph. In either case, after contract performance is complete, the 8(a) partner to the joint venture must submit a report to its servicing SBA district office explaining how the applicable performance of work requirements were met for the contract.

* * * * *

■ 3. Amend § 121.402(b) by revising the last sentence and adding a new sentence at the end thereof to read as follows:

§ 121.402 What size standards are applicable to Federal Government contracting programs?

* * * * *

(b) * * * Acquisitions for supplies must be classified under the appropriate manufacturing or supply NAICS code, not under a wholesale trade or retail trade NAICS code. A concern that submits an offer or quote for a contract where the NAICS code assigned to the contract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it meets the requirements set forth in § 121.406(b).

* * * * *

■ 4. Amend § 121.404 by adding a new paragraph (g)(4) to read as follows:

§ 121.404 When does SBA determine the size status of a business concern?

* * * * *

(g) * * *

(4) If during contract performance a subcontractor performs primary and vital requirements of a contract, the contractor and its ostensible subcontractor will be treated as joint venturers. *See* § 121.103(h)(4). If the two firms exceed the applicable size standard in the aggregate, the contractor cannot continue to certify as small for that contract or for any task order under that contract.

* * * * *

■ 5. Amend § 121.406 as follows:

■ a. Revise the section heading and paragraphs (a) introductory text, and (a)(1);

■ b. Revise paragraph (b)(1) introductory text;

■ c. Remove the word "and" at the end of paragraph (b)(1)(ii);

■ d. Revise paragraph (b)(1)(iii);

■ e. Add a new paragraph (b)(1)(iv);

■ f. Redesignate paragraphs (b)(3), (b)(4) and (b)(5) as paragraphs (b)(5), (b)(6), and (b)(7), respectively, and add new paragraphs (b)(3) and (b)(4); and

■ g. Revise newly redesignated paragraph (b)(6) to read as follows:

§ 121.406 How does a small business concern qualify to provide manufactured products or other supply items under a small business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, or 8(a) contract?

(a) *General.* In order to qualify as a small business concern for a small business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, or 8(a) contract to provide manufactured products or other supply items, an offeror must either:

(1) Be the manufacturer or producer of the end item being procured (and the end item must be manufactured or produced in the United States); or

* * * * *

(b) * * *

(1) A firm may qualify as a small business concern for a requirement to provide manufactured products or other supply items as a nonmanufacturer if it:

* * * * *

(iii) Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and

(iv) Will supply the end item of a small business manufacturer, processor or producer made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(5) of this section.

* * * * *

(3) The nonmanufacturer rule applies only to procurements that have been assigned a manufacturing or supply NAICS code. The nonmanufacturer rule does not apply to contracts that have been assigned a service, construction, or specialty trade construction NAICS code.

(4) The nonmanufacturer rule applies only to the supply component of a requirement classified as a manufacturing or supply contract. If a requirement is classified as a service contract, but also has a supply component, the nonmanufacturer rule does not apply to the supply component of the requirement.

Example 1 to paragraph (b)(4). A procuring agency seeks to acquire computer integration and maintenance services. Included within that requirement, the agency also seeks to acquire some computer hardware. If the procuring agency determines that the principal nature of the procurement is services and classifies the procurement as a services procurement, the nonmanufacturer rule does not apply to the computer hardware portion of the requirement. This means that while a contractor must meet the applicable performance of work requirement set forth in § 125.6 for the services portion of the contract, the contractor does not have to

supply the computer hardware of a small business manufacturer.

Example 2 to paragraph (b)(4). A procuring agency seeks to acquire computer hardware, as well as computer integration and maintenance services. If the procuring agency determines that the principal nature of the procurement is for supplies and classifies the procurement as a supply procurement, the nonmanufacturer rule applies to the computer hardware portion of the requirement. A firm seeking to qualify as a small business nonmanufacturer must supply the computer hardware manufactured by a small business. Because the requirement is classified as a supply contract, the contractor does not have to meet the performance of work requirement set forth in § 125.6 for the services portion of the contract.

* * * * *

(6) The two waiver possibilities identified in paragraph (b)(5) of this section are called "individual" and "class" waivers respectively, and the procedures for requesting and granting them are contained in § 121.1204.

* * * * *

■ 6. Amend § 121.1001(b) by adding a new paragraph (b)(10) at the end thereof to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

* * * * *

(b) * * *

(10) The SBA Inspector General may request a formal size determination with respect to any of the programs identified in paragraph (b) of this section.

PART 124—8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 7. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, section 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

§§ 124.110, 124.111, 124.502, 124,503, 124.505, 124.507, 124.513, 124.514, 124.515, 124.517, 124.519, and 124.1002 [Amended]

■ 8. Remove the term "Standard Industrial Classification" in § 124.1002(b)(1) and add, in its place the term "North American Industry Classification System"; and remove the term "SIC" and add, in its place, the term "NAICS," in the following places:

■ a. § 124.110(c);
■ b. § 124.111(d);
■ c. § 124.502(c)(3);
■ d. § 124.503(b) introductory text;
■ e. § 124.503(b)(1);
■ f. § 124.503(b)(2);
■ g. § 124.503(c)(1)(iii);
■ h. § 124.503(g)(3);
■ i. § 124.505(a)(3);
■ j. § 124.507(b)(2)(i);
■ k. § 124.513(b)(1) introductory text, (b)(1)(i), and (b)(1)(ii)(A);
■ l. § 124.513(b)(2);
■ m. § 124.513(b)(3);
■ n. § 124.514(a)(1);
■ o. § 124.515(d);
■ p. § 124.517(d)(1);
■ q. § 124.517(d)(2);
■ r. § 124.519(a)(1);
■ s. § 124.519(a)(2);
■ t. § 124.1002 (b)(1)(i), and (b)(1)(ii); and
■ u. § 124.1002(f)(3).

■ 9. Revise § 124.2 to read as follows:

§ 124.2 What length of time may a business participate in the 8(a) BD program?

A Participant receives a program term of nine years from the date of SBA's approval letter certifying the concern's admission to the program. The Participant must maintain its program eligibility during its tenure in the program and must inform SBA of any changes that would adversely affect its program eligibility. The nine year program term may be shortened only by termination, early graduation (including voluntary early graduation) or voluntary withdrawal as provided for in this subpart.

■ 10. Amend § 124.3 as follows:
■ a. By amending the definition of "Alaska Native" by adding in the first sentence, the phrase ", as defined by the Alaska Native Claims Settlement Act (43 U.S.C. 1602)," before the word "means";
■ b. By adding a definition of "NAICS code";
■ c. By revising the definitions of "Primary industry classification" and "Same or similar line of business,"; and
■ d. By adding a definition of the term "Regularly maintains an office" to read as follows:

§ 124.3 What definitions are important in the 8(a) BD program?

* * * * *

NAICS code means North American Industry Classification System code.

* * * * *

Primary industry classification means the six digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the 8(a) BD applicant or Participant. The NAICS code designations are described in the North American Industry Classification System book published by the U.S. Office of Management and Budget. SBA utilizes § 121.107 of this chapter in determining a firm's primary industry classification. A Participant may change its primary industry classification where it can demonstrate to SBA by clear evidence that the majority of its total revenues during a two-year period have evolved from one NAICS code to another.

* * * * *

Regularly maintains an office means conducting business activities as an on-going business concern from a fixed location on a daily basis. The best evidence of the regular maintenance of an office is documentation that shows that third parties routinely transact business with a Participant at a location within a particular geographical area. Such evidence includes lease agreements, payroll records, advertisements, bills, correspondence, and evidence that the Participant has complied with all local requirements concerning registering, licensing, or filing with the State or County where the place of business is located. Although a firm would generally be required to have a license to do business in a particular location in order to "regularly maintain an office" there, the firm would not be required to have an additional construction license or other specific type of license in order to regularly maintain an office.

Same or similar line of business means business activities within the same four-digit "Industry Group" of the NAICS Manual as the primary industry classification of the applicant or Participant. The phrase "same business area" is synonymous with this definition.

* * * * *

■ 11. Add § 124.4 to read as follows:

§ 124.4 What restrictions apply to fees for applicant and Participant representatives?

(a) The compensation received by any packager, agent or representative of an 8(a) applicant or Participant for assisting the applicant in obtaining 8(a) certification or for assisting the Participant in obtaining 8(a) contracts, or any other assistance to support program participation, must be reasonable in light of the service(s) performed by the packager, agent or representative.

(b) In assisting a Participant obtain one or more 8(a) contracts, a packager, agent or representative cannot receive a fee that is a percentage of the gross contract value.

(c) For good cause, the AA/BD may initiate proceedings to suspend or revoke a packager's, agent's or representative's privilege to assist applicants obtain 8(a) certification, assist Participants obtain 8(a) contracts, or any other assistance to support program participation. Good cause is defined in § 103.4 of these regulations.

(1) The AA/BD may send a show cause letter requesting the agent or representative to demonstrate why the agent or representative should not be suspended or proposed for revocation, or may immediately send a written notice suspending or proposing revocation, depending upon the evidence in the administrative record. The notice will include a discussion of the relevant facts and the reason(s) why the AA/BD believes that good cause exists.

(2) Unless the AA/BD specifies a different time in the notice, the agent or representative must respond to the notice within 30 days of the date of the notice with any facts or arguments showing why good cause does not exist. The agent or representative may request additional time to respond, which the AA/BD may grant in his or her discretion.

(3) After considering the agent's or representative's response, the AA/BD will issue a final determination, setting forth the reasons for this decision and, if a suspension continues to be effective or a revocation is implemented, the term of the suspension or revocation.

(d) The AA/BD may refer a packager, agent, or other representative to SBA's Suspension and Debarment Official for possible Government-wide suspension or debarment where appropriate, including where it appears that the packager, agent or representative assisted an applicant to or Participant in the 8(a) BD program submit information to SBA that the packager, agent or representative knew was false or materially misleading.

■ 12. Revise § 124.101 to read as follows:

§ 124.101 What are the basic requirements a concern must meet for the 8(a) BD program?

Generally, a concern meets the basic requirements for admission to the 8(a) BD program if it is a small business which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of and residing in the United States, and which demonstrates potential for success.

■ 13. Amend § 124.102 by redesignating paragraph (a) as paragraph (a)(1), and by adding a new paragraph (a)(2) to read as follows:

§ 124.102 What size business is eligible to participate in the 8(a) BD program?

(a)(1) * * *

(2) In order to remain eligible to participate in the 8(a) BD program after certification, a firm must generally remain small for its primary industry classification, as adjusted during the program. SBA may graduate a Participant prior to the expiration of its program term where the firm exceeds the size standard corresponding to its primary NAICS code, as adjusted, for three successive program years, unless the firm demonstrates that through its growth and development its primary industry is changing, pursuant to the criteria described in 13 CFR 121.107, to a related secondary NAICS code that is contained in its most recently approved business plan. The firm's business plan must contain specific targets, objectives, and goals for its continued growth and development under its new primary industry.

* * * * *

§ 124.103 [Amended]

■ 14. Amend § 124.103(b)(1) by removing the parenthetical "(American Indians, Eskimos, Aleuts, or Native Hawaiians)" and by adding in its place, the parenthetical "(Alaska Natives, Native Hawaiians, or enrolled members of a Federally or State recognized Indian Tribe)".

■ 15. Amend § 124.104 as follows:

■ a. Revise paragraph (b)(2);

■ b. Revise paragraph (c), introductory text;

■ c. Redesignate paragraph (c)(2)(ii) as paragraph (c)(2)(iv), and add new paragraphs (c)(2)(ii) and (c)(2)(iii); and

■ d. Add new paragraphs (c)(3) and (c)(4) to read as follows:

§ 124.104 Who is economically disadvantaged?

* * * * *

(b) * * *

(2) When married, an individual claiming economic disadvantage must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated. SBA will consider a spouse's financial situation in determining an individual's access to credit and capital where the spouse has a role in the business (*e.g.,* an officer, employee or director) or has lent money to, provided credit support to, or guaranteed a loan of the business. SBA does not take into consideration community property laws when determining economic disadvantage.

* * * * *

(c) *Factors to be considered.* In considering diminished capital and credit opportunities, SBA will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including income for the past three years (including bonuses and the value of company stock received in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. An individual who exceeds any one of the thresholds set forth in this paragraph for personal income, net worth or total assets will generally be deemed to have access to credit and capital and not economically disadvantaged.

* * * * *

(2) * * *

(ii) Funds invested in an Individual Retirement Account (IRA) or other official retirement account that are unavailable to an individual until retirement age without a significant penalty will not be considered in determining an individual's net worth. In order to properly assess whether funds invested in a retirement account may be excluded from an individual's net worth, the individual must provide information about the terms and restrictions of the account to SBA and certify that the retirement account is legitimate.

(iii) Income received from an applicant or Participant that is an S corporation, limited liability company (LLC) or partnership will be excluded from an individual's net worth where the applicant or Participant provides documentary evidence demonstrating that the income was reinvested in the firm or used to pay taxes arising in the normal course of operations of the firm. Losses from the S corporation, LLC or partnership, however, are losses to the company only, not losses to the individual, and cannot be used to reduce an individual's net worth.

* * * * *

(3) *Personal income for the past three years.* (i) If an individual's adjusted gross income averaged over the three years preceding submission of the 8(a) application exceeds $250,000, SBA will presume that such individual is not economically disadvantaged. For continued 8(a) BD eligibility, SBA will presume that an individual is not economically disadvantaged if his or her adjusted gross income averaged over the three preceding years exceeds $350,000. The presumption may be rebutted by a showing that this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage.

(ii) Income received from an applicant or Participant that is an S corporation, LLC or partnership will be excluded from an individual's income where the applicant or Participant provides

documentary evidence demonstrating that the income was reinvested in the firm or used to pay taxes arising in the normal course of operations of the firm. Losses from the S corporation, LLC or partnership, however, are losses to the company only, not losses to the individual, and cannot be used to reduce an individual's personal income.

(4) *Fair market value of all assets.* An individual will generally not be considered economically disadvantaged if the fair market value of all his or her assets (including his or her primary residence and the value of the applicant/Participant firm) exceeds $4 million for an applicant concern and $6 million for continued 8(a) BD eligibility. The only assets excluded from this determination are funds excluded under paragraph (c)(2)(ii) of this section as being invested in a qualified IRA account.

■ 16. Amend § 124.105 by revising paragraphs (g) and (h)(2) to read as follows:

§ 124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?

* * * * *

(g) *Ownership of another Participant in the same or similar line of business.* (1) An individual may not use his or her disadvantaged status to qualify a concern if that individual has an immediate family member who is using or has used his or her disadvantaged status to qualify another concern for the 8(a) BD program. The AA/BD may waive this prohibition if the two concerns have no connections, either in the form of ownership, control or contractual relationships, and provided the individual seeking to qualify the second concern has management and technical experience in the industry. Where the concern seeking a waiver is in the same or similar line of business as the current or former 8(a) concern, there is a presumption against granting the waiver. The applicant must provide clear and compelling evidence that no connection exists between the two firms.

(2) If the AA/BD grants a waiver under paragraph (g)(1) of this section, SBA will, as part of its annual review, assess whether the firm continues to operate independently of the other current or former 8(a) concern of an immediate family member. SBA may initiate proceedings to terminate a firm for which a waiver was granted from further participation in the 8(a) BD program if it is apparent that there are connections between the two firms that were not disclosed to the AA/BD when the waiver was granted or that came into existence after the waiver was granted. SBA may also initiate termination proceedings if the firm begins to operate in the same or similar line of business as the current or former 8(a) concern of the immediate family member and the firm did not operate in the same or similar line of business at the time the waiver was granted.

(h) * * *

(2) A non-Participant concern in the same or similar line of business or a principal of such concern may not own more than a 10 percent interest in a Participant that is in the developmental stage or more than a 20 percent interest in a Participant in a transitional stage of the program, except that a former Participant or a principal of a former Participant (except those that have been terminated from 8(a) BD program participation pursuant to §§ 124.303 and 124.304) may have an equity ownership interest of up to 20 percent in a current Participant in the developmental stage of the program or up to 30 percent in a transitional stage Participant, in the same or similar line of business.

* * * * *

■ 17. Amend § 124.106 by revising paragraph (a)(2), and paragraph (e), introductory text, and by adding a new paragraph (h) to read as follows:

§ 124.106 When do disadvantaged individuals control an applicant or Participant?

* * * * *

(a) * * *

(2) A disadvantaged full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or Participant and be physically located in the United States.

* * * * *

(e) Non-disadvantaged individuals may be involved in the management of an applicant or Participant, and may be stockholders, partners, limited liability members, officers, and/or directors of the applicant or Participant. However, no non-disadvantaged individual or immediate family member may:

* * * * *

(h) Notwithstanding the provisions of this section requiring a disadvantaged owner to control the daily business operations and long-term strategic planning of an 8(a) BD Participant, where a disadvantaged individual upon whom eligibility is based is a reserve component member in the United States military who has been called to active duty, the Participant may elect to designate one or more individuals to control the Participant on behalf of the disadvantaged individual during the active duty call-up period. If such an election is made, the Participant will continue to be treated as an eligible 8(a) Participant and no additional time will be added to its program term. Alternatively, the Participant may elect to suspend its 8(a) BD participation during the active duty call-up period pursuant to §§ 124.305(h)(1)(ii) and 124.305(h)(4).

■ 18. Amend § 124.108 by revising paragraph (a)(1) and removing paragraph (f) to read as follows:

§ 124.108 What other eligibility requirements apply for individuals or businesses?

(a) * * *

(1) If during the processing of an application, adverse information is obtained from the applicant or a credible source regarding possible criminal conduct by the applicant or any of its principals, SBA will suspend further processing of the application and refer it to SBA's Office of Inspector General (OIG) for review. If SBA does not hear back from OIG within 45 days, SBA will coordinate with OIG a suitable date to recommence the processing of the application. The AA/BD will consider any findings of the OIG when evaluating the application.

* * * * *

■ 19. Amend § 124.109 by revising paragraphs (b) introductory text, (c)(3)(i), (c)(3)(ii), (c)(4)(i) introductory text, (c)(4)(i)(B), and (c)(6) to read as follows:

§ 124.109 Do Indian Tribes and Alaska Native Corporations have any special rules for applying to the 8(a) program?

* * * * *

(b) *Tribal eligibility.* In order to qualify a concern which it owns and controls for participation in the 8(a) BD program, an Indian Tribe must establish its own economic disadvantaged status under paragraph (b)(2) of this section. Once an Indian Tribe establishes that it is economically disadvantaged in connection with the application for one Tribally-owned firm, it need not reestablish such status in order to have other businesses that it owns certified for 8(a) BD program participation, unless specifically requested to do so by the AA/BD. An Indian Tribe may request to meet with SBA prior to submitting an application for 8(a) BD participation for its first applicant firm to better understand what SBA requires for it to establish economic disadvantage. Each Tribally-owned concern seeking to be certified for 8(a) BD participation must comply with the

provisions of paragraph (c) of this section.

* * * * *

(c) * * *

(3) * * *

(i) For corporate entities, a Tribe must unconditionally own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock. For non-corporate entities, a Tribe must unconditionally own at least a 51 percent interest.

(ii) A Tribe may not own 51% or more of another firm which, either at the time of application or within the previous two years, has been operating in the 8(a) program under the same primary NAICS code as the applicant. A Tribe may, however, own a Participant or other applicant that conducts or will conduct secondary business in the 8(a) BD program under the NAICS code which is the primary NAICS code of the applicant concern. In addition, once an applicant is admitted to the 8(a) BD program, it may not receive an 8(a) sole source contract that is a follow-on contract to an 8(a) contract that was performed immediately previously by another Participant (or former Participant) owned by the same Tribe. For purposes of this paragraph, the same primary NAICS code means the six digit NAICS code having the same corresponding size standard.

* * * * *

(4) * * *

(i) The management and daily business operations of a Tribally-owned concern must be controlled by the Tribe. The Tribally-owned concern may be controlled by the Tribe through one or more individuals who possess sufficient management experience of an extent and complexity needed to run the concern, or through management as follows:

* * * * *

(B) Management may be provided by non-Tribal members if the concern can demonstrate that the Tribe can hire and fire those individuals, that it will retain control of all management decisions common to boards of directors, including strategic planning, budget approval, and the employment and compensation of officers, and that a written management development plan exists which shows how Tribal members will develop managerial skills sufficient to manage the concern or similar Tribally-owned concerns in the future.

* * * * *

(6) *Potential for success.* A Tribally-owned applicant concern must possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) BD program. A Tribally-owned applicant may establish potential for success by demonstrating that:

(i) It has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) for each of the two previous tax years showing operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification; or

(ii) The individual(s) who will manage and control the daily business operations of the firm have substantial technical and management experience, the applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category, and the applicant has adequate capital to sustain its operations and carry out its business plan as a Participant; or

(iii) The Tribe has made a firm written commitment to support the operations of the applicant concern and it has the financial ability to do so.

* * * * *

■ 20. Amend § 124.110 as follows:

■ a. Redesignate paragraphs (c), (d) and (e) as paragraphs (e), (f) and (g), respectively;

■ b. Add new paragraphs (c) and (d);

■ c. Add two new sentences to the end of newly designated paragraph (e); and

■ d. Revise newly designated paragraph (g).

§ 124.110 Do Native Hawaiian Organizations have any special rules for applying to the 8(a) BD program?

* * * * *

(c) An NHO must establish that it is economically disadvantaged and that its business activities will principally benefit Native Hawaiians.

(1) To determine whether an NHO is economically disadvantaged, SBA considers the individual economic status of the NHO's members. The majority of an NHO's members must qualify as economically disadvantaged under § 124.104. For the first 8(a) applicant owned by a particular NHO, individual NHO members must meet the same initial eligibility economic disadvantage thresholds as individually-owned 8(a) applicants. For any additional 8(a) applicant owned by the NHO, individual NHO members must meet the economic disadvantage thresholds for continued 8(a) eligibility. If the NHO has no members, then a majority of the members of the board of directors must qualify as economically disadvantaged. If there are members and a board of directors, only a majority of the members must be economically disadvantaged.

(2) An NHO should describe any activities that it has done to benefit Native Hawaiians at the time its NHO-owned firm applies to the 8(a) BD program. In addition, the NHO must include statements in its bylaws or operating agreements identifying the benefits Native Hawaiians will receive from the NHO. The NHO must have a detailed plan that shows how revenue earned by the NHO will principally benefit Native Hawaiians. As part of an annual review conducted for an NHO-owned Participant, SBA will review how the NHO is fulfilling its obligation to principally benefit Native Hawaiians.

(d) An NHO must control the applicant or Participant firm. To establish that it is controlled by an NHO, an applicant or Participant must demonstrate that the NHO controls its board of directors. An individual responsible for the day-to-day management of an NHO-owned firm need not establish personal social and economic disadvantage.

(e) * * * In addition, once an applicant is admitted to the 8(a) BD program, it may not receive an 8(a) sole source contract that is a follow-on contract to an 8(a) contract performed by another Participant (or former Participant that has left the program within two years of the date of application) owned by the Native Hawaiian Organization for a period of two years from the date of admission to the program. For purposes of this paragraph, the same primary NAICS code means the six digit NAICS code having the same corresponding size standard.

* * * * *

(g) An applicant concern owned by a NHO must possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) BD program. An applicant concern owned by a NHO may establish potential for success by demonstrating that:

(1) It has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) for each of the two previous tax years showing operating revenues in the primary industry in with the applicant is seeking 8(a) BD certification; or

(2) The individual(s) who will manage and control the daily business operations of the firm have substantial technical and management experience, the applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category, and the applicant has adequate capital to sustain its operations and carry out its business plan as a Participant; or

(3) The NHO has made a firm written commitment to support the operations of the applicant concern and it has the financial ability to do so.

■ 21. Amend § 124.111 by adding two new sentences to the end of paragraph (d) and by revising paragraph (f) to read as follows:

§ 124.111 Do Community Development Corporations (CDCs) have any special rules for applying to the 8(a) BD program?

* * * * *

(d) * * * In addition, once an applicant is admitted to the 8(a) BD program, it may not receive an 8(a) sole source contract that is a follow-on contract to an 8(a) contract performed by another Participant (or former Participant that has left the program within two years of the date of application) owned by the CDC for a period of two years from the date of admission to the program. For purposes of this paragraph, the same primary NAICS code means the six digit NAICS code having the same corresponding size standard.

* * * * *

(f) An applicant concern owned by a CDC must possess reasonable prospects for success in competing in the private sector if admitted to the 8(a) BD program. An applicant concern owned by a CDC may establish potential for success by demonstrating that:

(1) It has been in business for at least two years, as evidenced by income tax returns (individual or consolidated) for each of the two previous tax years showing operating revenues in the primary industry in with the applicant is seeking 8(a) BD certification; or

(2) The individual(s) who will manage and control the daily business operations of the firm have substantial technical and management experience, the applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary industry category, and the applicant has adequate capital to sustain its operations and carry out its business plan as a Participant; or

(3) The CDC has made a firm written commitment to support the operations of the applicant concern and it has the financial ability to do so.

* * * * *

■ 22. Amend § 124.112 as follows:

■ a. Redesignate paragraphs (b)(7) and (b)(8) as paragraphs (b)(9) and (b)(10), respectively, and add new paragraphs (b)(7) and (b)(8);

■ b. Revise paragraphs (d)(1), (d)(2) introductory text, and (d)(3); and

■ c. Add new paragraphs (d)(5), (e) and (f) to read as follows:

§ 124.112 What criteria must a business meet to remain eligible to participate in the 8(a) BD program?

* * * * *

(b) * * *

(7) A listing of any fees paid to agents or representatives to assist the Participant in obtaining or seeking to obtain a Federal contract;

(8) A report for each 8(a) contract performed during the year explaining how the performance of work requirements are being met for the contract, including any 8(a) contracts performed as a joint venture;

* * * * *

(d) * * *

(1) The term withdrawal includes, but is not limited to, the following: Cash dividends; distributions in excess of amounts needed to pay S Corporation, LLC or partnership taxes; cash and property withdrawals; payments to immediate family members not employed by the Participant; bonuses to officers; and investments on behalf of an owner. Although officers' salaries are generally not considered withdrawals for purposes of this paragraph, SBA will count those salaries as withdrawals where SBA believes that a firm is attempting to circumvent the excessive withdrawal limitations though the payment of officers' salaries. SBA will look at the totality of the circumstances in determining whether to include any specific amount as a withdrawal under this paragraph.

(2) If SBA determines that funds or assets have been excessively withdrawn from the Participant for the personal benefit of one or more owners or managers, or any person or entity affiliated with such owners or managers, and such withdrawal was detrimental to the achievement of the targets, objectives, and goals contained in the Participant's business plan, SBA may:

* * *

(3) Withdrawals are excessive if in the aggregate during any fiscal year of the Participant they exceed (i) $250,000 for firms with sales up to $1,000,000; (ii) $300,000 for firms with sales between $1,000,000 and $2,000,000; and (iii) $400,000 for firms with sales exceeding $2,000,000.

* * * * *

(5) The excessive withdrawal analysis does not apply to Participants owned by Tribes, ANCs, NHOs, or CDCs where a withdrawal is made for the benefit of the Tribe, ANC, NHO, CDC or the native or shareholder community. It does, however, apply to withdrawals from a firm owned by a Tribe, ANC, NHO, or CDC that do not benefit the relevant entity or community. Thus, if funds or assets are withdrawn from an entity-owned Participant for the benefit of a non-disadvantaged manager or owner that exceed the withdrawal thresholds, SBA may find that withdrawal to be excessive. For example, a $1,000,000 payout to a non-disadvantaged manager would be deemed an excessive withdrawal.

(e) *Change in primary industry classification.* A Participant may request that the primary industry classification contained in its business plan be changed by filing such a request with its servicing SBA district office. SBA will grant such a request where the Participant can demonstrate that the majority of its total revenues during a three-year period have evolved from one NAICS code to another.

(f) *Graduation determination.* As part of the final annual review performed by SBA prior to the expiration of a Participant's nine-year program term, SBA will determine if the Participant has met the targets, objectives and goals set forth in its business plan and, thus, whether the Participant will be considered to have graduated from the 8(a) BD program at the expiration of its program term. A firm that has not met the targets, objectives and goals set forth in its business plan at the end of its nine-year term in the 8(a) BD program will not be considered to have graduated from the 8(a) BD program, but rather to have merely completed its program term.

■ 23. Revise § 124.202 to read as follows:

§ 124.202 How must an application be filed?

An application for 8(a) BD program admission must generally be filed in an electronic format. An electronic application can be found by going to the 8(a) BD page of SBA's Web site (*http://www.sba.gov*). An applicant concern that does not have access to the electronic format or does not wish to file an electronic application may request in writing a hard copy application from the AA/BD. The SBA district office will provide an applicant concern with information regarding the 8(a) BD program.

■ 24. Revise § 124.203 to read as follows:

§ 124.203 What must a concern submit to apply to the 8(a) BD program?

Each 8(a) BD applicant concern must submit those forms and attachments required by SBA when applying for admission to the 8(a) BD program. These forms and attachments may include, but not be limited to, financial statements, copies of signed Federal personal and

business tax returns, individual and business bank statements, and personal history statements. An applicant must also submit a signed IRS Form 4506T, Request for Copy or Transcript of Tax Form, to SBA. In all cases, the applicant must provide a wet signature from each individual claiming social and economic disadvantage status.

■ 25. Amend § 124.204 as follows:
■ a. Revise paragraph (a);
■ b. Redesignate paragraphs (c), (d) (e) and (f) as paragraphs (d), (e), (f) and (g);
■ c. Add a new paragraph (c); and
■ d. Revise newly designated paragraph (d).

§ 124.204 How does SBA process applications for 8(a) BD program admission?

(a) The AA/BD is authorized to approve or decline applications for admission to the 8(a) BD program. The DPCE will receive, review and evaluate all 8(a) BD applications. SBA will advise each program applicant within 15 days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will process an application for 8(a) BD program participation within 90 days of receipt of a complete application package by the DPCE. Incomplete packages will not be processed.

* * * * *

(c) The burden of proof to demonstrate eligibility is on the applicant concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the missing information would adversely affect the firm or would demonstrate lack of eligibility in the area to which the information relates.

(d) An applicant must be eligible as of the date the AA/BD issues a decision. The decision will be based on the facts set forth in the application, any information received in response to SBA's request for clarification made pursuant to paragraph (b) of this section, and any changed circumstances since the date of application.

* * * * *

■ 26. Amend § 124.205 by revising paragraphs (a) and (b) to read as follows:

§ 124.205 Can an applicant ask SBA to reconsider SBA's initial decision to decline its application?

(a) An applicant may request the AA/BD to reconsider his or her initial decline decision by filing a request for reconsideration with SBA. The applicant may submit a revised electronic application or submit its request for reconsideration to the SBA DPCE unit that originally processed its application by personal delivery, first class mail, express mail, facsimile transmission followed by first class mail, or commercial delivery service. The applicant must submit its request for reconsideration within 45 days of its receipt of written notice that its application was declined. If the date of actual receipt of such written notice cannot be determined, SBA will presume receipt to have occurred ten calendar days after the date the notice was sent to the applicant. The applicant must provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline, whether or not available at the time of initial application, including information and documentation regarding changed circumstances.

(b) The AA/BD will issue a written decision within 45 days of SBA's receipt of the applicant's request. The AA/BD may either approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the AA/BD will explain why the applicant is not eligible for admission to the 8(a) BD program and give specific reasons for the decline.

* * * * *

■ 27. Revise § 124.301 to read as follows:

§ 124.301 What are the ways a business may leave the 8(a) BD program?

A concern participating in the 8(a) BD program may leave the program by any of the following means:

(a) Expiration of the program term established pursuant to § 124.2;

(b) Voluntary withdrawal or voluntary early graduation;

(c) Graduation pursuant to § 124.302;

(d) Early graduation pursuant to the provisions of §§ 124.302 and 124.304; or

(e) Termination pursuant to the provisions of §§ 124.303 and 124.304.

■ 28. Amend § 124.302 as follows:
■ a. Revise the section heading;
■ b. Revise paragraphs (a) introductory text, and (a)(1);
■ c. Remove paragraph (d);
■ d. Redesignate paragraph (c) as paragraph (d); and

3. Add a new paragraph (c) to read as follows:

§ 124.302 What is graduation and what is early graduation?

(a) *General.* SBA may graduate a firm from the 8(a) BD program at the expiration of its program term (graduation) or prior to the expiration of its program term (early graduation) where SBA determines that:

(1) The concern has successfully completed the 8(a) BD program by substantially achieving the targets, objectives, and goals set forth in its business plan, and has demonstrated the ability to compete in the marketplace without assistance under the 8(a) BD program; or

* * * * *

(c) *Exceeding the size standard corresponding to the primary NAICS code.* SBA may graduate a Participant prior to the expiration of its program term where the firm exceeds the size standard corresponding to its primary NAICS code, as adjusted during the program, for three successive program years unless the firm is able to demonstrate that it has taken steps to change its industry focus to another NAICS code that is contained in the goals, targets and objectives of its business plan.

* * * * *

■ 29. Amend § 124.303 by revising paragraphs (a)(2), (a)(13) and (a)(16) to read as follows:

§ 124.303 What is termination?

(a) * * *

(2) Failure by the concern to maintain its eligibility for program participation, including failure by an individual owner or manager to continue to meet the requirements for economic disadvantage set forth in § 124.104 where such status is needed for eligibility. * * *

(13) Excessive withdrawals that are detrimental to the achievement of the targets, objectives, and goals contained in the Participant's business plan, including transfers of funds or other business assets from the concern for the personal benefit of any of its owners or managers, or any person or entity affiliated with the owners or managers (*see* § 124.112(d)). * * *

(16) Debarment, suspension, voluntary exclusion, or ineligibility of the concern or its principals pursuant to 2 CFR parts 180 and 2700 or FAR subpart 9.4 (48 CFR part 9, subpart 9.4). * * *

■ 30. Revise § 124.304(f) to read as follows:

§ 124.304 What are the procedures for early graduation and termination?

* * * * *

(f) *Effect or early graduation or termination.* (1) After the effective date of early graduation or termination, a Participant is no longer eligible to receive any 8(a) BD program assistance. However, such concern is obligated to

complete previously awarded 8(a) contracts, including any priced options which may be exercised.

(2) When SBA early graduates or terminates a firm from the 8(a) BD program, the firm will generally not qualify as an SDB for future procurement actions. If the firm believes that it does qualify as an SDB and seeks to certify itself as an SDB, as part of its SDB certification the firm must identify:

(i) That it has been early graduated or terminated;

(ii) The statutory or regulatory authority that qualifies the firm for SDB status; and

(iii) Where applicable, the circumstances that have changed since the early graduation or termination or that do not prevent it from qualifying as an SDB.

(3) Where a concern certifies that it qualifies as an SDB pursuant to paragraph (f)(2) of the section, the procuring activity contracting officer may protest the SDB status of the firm to SBA pursuant to § 124.1010 where questions regarding the firm's SDB status remain.

■ 31. Amend § 124.305 by revising the first sentence of paragraph (a), by revising paragraph (h), to read as follows:

§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

(a) Except as set forth in paragraph (h) of this section, at any time after SBA issues a Letter of Intent to Terminate an 8(a) Participant pursuant to § 124.304, the AA/BD may suspend 8(a) contract support and all other forms of 8(a) BD program assistance to that Participant until the issue of the Participant's termination from the program is finally determined. * * *

* * * * *

(h)(1) SBA will suspend a Participant from receiving further 8(a) BD program benefits when termination proceedings have not been commenced pursuant to § 124.304 where:

(i) A Participant requests a change of ownership and/or control and SBA discovers that a change of ownership or control has in fact occurred prior to SBA's approval; or

(ii) A disadvantaged individual who is involved in the ownership and/or control of the Participant is called to active military duty by the United States, his or her participation in the firm's management and daily business operations is critical to the firm's continued eligibility, and the Participant elects not to designate a non-disadvantaged individual to control the concern during the call-up period pursuant to § 124.106(h).

(2) A suspension initiated under paragraph (h) of this section will be commenced by the issuance of a notice similar to that required for termination-related suspensions under paragraph (b) of this section, except that a suspension issued under paragraph (h) is not appealable.

(3) Where a Participant is suspended pursuant to paragraph (h)(1)(i) of this section and SBA approves the change of ownership and/or control, the length of the suspension will be added to the firm's program term only where the change in ownership or control results from the death or incapacity of a disadvantaged individual or where the firm requested prior approval and waited at least 60 days for SBA approval before making the change.

(4) Where a Participant is suspended pursuant to paragraph (h)(1)(ii) of this section, the Participant must notify SBA when the disadvantaged individual returns to control the firm so that SBA can immediately lift the suspension. When the suspension is lifted, the length of the suspension will be added to the concern's program term.

(5) *Effect of suspension.* Once a suspension is issued pursuant to this section, a Participant cannot receive any additional 8(a) BD program assistance, including new 8(a) contract awards, for as long as the Participant is suspended. This includes any procurement requirements that the firm has self-marketed and those that have been accepted into the 8(a) BD program on behalf of the suspended concern. However, the suspended Participant must complete any previously awarded 8(a) contracts.

* * * * *

§ 124.403 [Amended]

■ 32. Amend § 124.403 by removing paragraph (d).

■ 33. Amend § 124.501 by revising the first sentence of paragraph (h) to read as follows:

§ 124.501 What general provisions apply to the award of 8(a) contracts?

* * * * *

(h) A Participant must certify that it qualifies as a small business under the size standard corresponding to the NAICS code assigned to each 8(a) contract. * * *

* * * * *

■ 34. Amend § 124.503 by revising paragraph (h) to read as follows:

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

* * * * *

(h) *Task or Delivery Order Contracts*—(1) *Contracts set aside for exclusive competition among 8(a) Participants.* (i) A task or delivery order contract that is reserved exclusively for 8(a) Program Participants must follow the normal 8(a) competitive procedures, including an offering to and acceptance into the 8(a) program, SBA eligibility verification of the apparent successful offerors prior to contract award, and application of the performance of work requirements set forth in § 124.510, and the nonmanufacturer rule, if applicable, (*see* § 121.406(b).

(ii) Individual orders need not be offered to or accepted into the 8(a) BD program.

(iii) A concern awarded such a contract may generally continue to receive new orders even if it has grown to be other than small or has exited the 8(a) BD program, and agencies may continue to take credit toward their prime contracting goals for orders awarded to 8(a) Participants. However, a concern may not receive, and agencies may not take 8(a), SDB or small business credit, for an order where the concern has been asked by the procuring agency to re-certify its size status and is unable to do so (*see* § 121.404(g)), or where ownership or control of the concern has changed and SBA has granted a waiver to allow performance to continue (*see* § 124.515).

(2) *8(a) credit for orders issued under multiple award contracts that were not set aside for exclusive competition among eligible 8(a) Participants.* In order to receive 8(a) credit for orders placed under multiple award contracts that were not initially set aside for exclusive competition among 8(a) Participants:

(i) The order must be offered to and accepted into the 8(a) BD program;

(ii) The order must be competed exclusively among 8(a) concerns;

(iii) The order must require the concern comply with applicable limitations on subcontracting provisions (*see* § 125.6) and the nonmanufacturer rule, if applicable, (*see* § 121.406(b)) in the performance of the individual order; and

(iv) SBA must verify that a concern is an eligible 8(a) concern prior to award of the order in accordance with § 124.507.

* * * * *

■ 35. Amend § 124.504 as follows:

■ a. Revise the heading and the first sentence of paragraph (a);

■ b. Remove paragraph (d); and
■ c. Redesignate paragraph (e) as paragraph (d), and revise redesignated paragraph (d) to read as follows:

§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?

* * * * *

(a) *Reservation as small business set-aside, or HUBZone, service disabled veteran-owned small business, or women-owned small business award.* The procuring activity issued a solicitation for or otherwise expressed publicly a clear intent to reserve the procurement as a small business set-aside, or a HUBZone, service disabled veteran-owned small business, or women-owned small business award prior to offering the requirement to SBA for award as an 8(a) contract. * * *

* * * * *

(d) *Release for non-8(a) competition.* (1) Except as set forth in (d)(4) of this section, where a procurement is awarded as an 8(a) contract, its follow-on or renewable acquisition must remain in the 8(a) BD program unless SBA agrees to release it for non-8(a) competition. If a procuring agency would like to fulfill a follow-on or renewable acquisition outside of the 8(a) BD program, it must make a written request to and receive the concurrence of the AA/BD to do so. In determining whether to release a requirement from the 8(a) BD program, SBA will consider:

(i) Whether the agency has achieved its SDB goal;

(ii) Where the agency is in achieving its HUBZone, SDVO, WOSB, or small business goal, as appropriate; and

(iii) Whether the requirement is critical to the business development of the 8(a) Participant that is currently performing it.

(2) SBA may decline to accept the offer of a follow-on or renewable 8(a) acquisition in order to give a concern previously awarded the contract that is leaving or has left the 8(a) BD program the opportunity to compete for the requirement outside of the 8(a) BD program.

(i) SBA will consider release under paragraph (2) only where:

(A) The procurement awarded through the 8(a) BD program is being or was performed by either a Participant whose program term will expire prior to contract completion, or by a former Participant whose program term expired within one year of the date of the offering letter;

(B) The concern requests in writing that SBA decline to accept the offer prior to SBA's acceptance of the requirement for award as an 8(a) contract; and

(C) The concern qualifies as a small business for the requirement now offered to the 8(a) BD program.

(ii) In considering release under paragraph (2), SBA will balance the importance of the requirement to the concern's business development needs against the business development needs of other Participants that are qualified to perform the requirement. This determination will include consideration of whether rejection of the requirement would seriously reduce the pool of similar types of contracts available for award as 8(a) contracts. SBA will also seek the views of the procuring agency.

(3) SBA will release a requirement under this paragraph only where the procuring activity agrees to procure the requirement as a small business, HUBZone, SDVO small business, or WOSB set-aside.

(4) The requirement that a follow-on procurement must be released from the 8(a) BD program in order for it to be fulfilled outside the 8(a) BD program does not apply to orders offered to and accepted for the 8(a) BD program pursuant to § 124.503(h).

■ 36. Amend § 124.506 by revising paragraph (a)(2)(ii), the example in paragraph (a) (3), and paragraph (b) to read as follows:

§ 124.506 At what dollar threshold must an 8(a) procurement be competed among eligible Participants?

* * * * *

(a) * * *

(2) * * *

(ii) The anticipated award price of the contract, including options, will exceed $6,500,000 for contracts assigned manufacturing NAICS codes and $4,000,000 for all other contracts; and

* * *

* * * * *

(3) * * *

Example to paragraph (a)(3). If the anticipated award price for a professional services requirement is determined to be $3.8 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the contract price arrived at after negotiation is $4.2 million.

* * * * *

(b) *Exemption from competitive thresholds for Participants owned by Indian Tribes, ANCs and NHOs.* (1) A Participant concern owned and controlled by an Indian Tribe or an ANC may be awarded a sole source 8(a) contract where the anticipated value of the procurement exceeds the applicable competitive threshold if SBA has not accepted the requirement into the 8(a) BD program as a competitive procurement.

(2) A Participant concern owned and controlled by an NHO may be awarded a sole source Department of Defense (DoD) 8(a) contract where the anticipated value of the procurement exceeds the applicable competitive threshold if SBA has not accepted the requirement into the 8(a) BD program as a competitive procurement.

(3) There is no requirement that a procurement must be competed whenever possible before it can be accepted on a sole source basis for a Tribally-owned or ANC-owned concern, or a concern owned by an NHO for DoD contracts, but a procurement may not be removed from competition to award it to a Tribally-owned, ANC-owned or NHO-owned concern on a sole source basis.

(4) A joint venture between one or more eligible Tribally-owned, ANC-owned or NHO-owned Participants and one or more non-8(a) business concerns may be awarded sole source 8(a) contracts above the competitive threshold amount, provided that it meets the requirements of § 124.513.

* * * * *

■ 37. Amend § 124.507 as follows:
■ a. Redesignate paragraphs (b)(2)(iii) and (b)(2)(iv) as paragraphs (b)(2)(iv) and (b)(2)(v), respectively;
■ b. Add new paragraphs (b)(2)(iii), (c)(2)(i), (c)(2)(ii) and (c)(2)(iii); and
■ c. Add an example to paragraph (d)(1) to read as follows:

§ 124.507 What procedures apply to competitive procurements?

* * * * *

(b) * * *

(2) * * *

(iii) In compliance with the continued eligibility reporting requirements set forth in § 124.112(b);

* * * * *

(c) * * *

(2) * * *

(i) A Participant may have bona fide places of business in more than one location.

(ii) In order for a Participant to establish a bona fide place of business in a particular geographic location, the SBA district office serving the geographic area of that location must determine if that location in fact qualifies as a bona fide place of business under SBA's requirements.

(A) A Participant must submit a request for a bona fide business determination to the SBA district office servicing it.

(B) The servicing district office will forward the request to the SBA district office serving the geographic area of the particular location for processing.

(iii) The effective date of a bona fide place of business is the date that the evidence (paperwork) shows that the business in fact regularly maintained its business at the new geographic location.

(iv) In order for a Participant to be eligible to submit an offer for a 8(a) procurement limited to a specific geographic area, it must receive from SBA a determination that it has a bona fide place of business within that area prior to submitting its offer for the procurement.

(d) * * *

(1) * * *

Example to paragraph (d)(1). The program term for 8(a) Participant X is scheduled to expire on December 19. A solicitation for a competitive 8(a) procurement specifies that initial offers are due on December 15. The procuring activity amends the solicitation to extend the date for the receipt of offers to January 5. X submits its offer on January 5 and is selected as the apparent successful offeror. X is eligible for award because it was an eligible 8(a) Participant on the initial date set forth in the solicitation for the receipt of offers.

* * * * *

■ 38. Amend § 124.509 by adding a new sentence at the end of paragraph (a)(1), and by adding two new sentences after the first sentence of paragraph (e)(1) to read as follows:

§ 124.509 What are non-8(a) business activity targets.

(a) * * *

(1) * * * Work performed by an 8(a) Participant for any Federal department or agency other than through an 8(a) contract, including work performed on orders under the General Services Administration Multiple Award Schedule program, and work performed as a subcontractor, including work performed as a subcontractor to another 8(a) Participant on an 8(a) contract, qualifies as work performed outside the 8(a) BD program.

* * * * *

(e) * * *

(1) * * * A firm receiving a waiver will be able to self market its capabilities and receive one or more sole source 8(a) contracts during the next program year. At its next annual review, SBA will reevaluate the firm's circumstances and determine whether the waiver should be extended an additional program year. * * *

* * * * *

■ 39. Amend § 124.510 by revising paragraph (b) to read as follows:

§ 124.510 What percentage of work must a Participant perform on an 8(a) contract?

* * * * *

(b) A Participant must certify in its offer that it will meet the applicable performance of work requirement. Compliance with the requirement will be determined as of the date of contract award, so that a Participant may revise its initial offer to clarify or otherwise come into compliance with the performance of work requirements. The procuring agency contracting officer must be satisfied that the Participant will meet the applicable performance of work requirement at time of award.

* * * * *

■ 40. Amend § 124.512 by adding a new sentence at the end of paragraph (a), by revising paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 124.512 Delegation of contract administration to procuring agencies.

(a) * * * Tracking compliance with the performance of work requirements set forth in § 124.510 is included within the functions performed by the procuring activity as part of contract administration.

(b) This delegation of contract administration authorizes a contracting officer to execute any priced option or in scope modification without SBA's concurrence. The contracting officer must, however, submit copies to the SBA servicing district office of all modifications and options exercised within 15 business days of their occurrence, or by another date agreed upon by SBA.

(c) SBA may conduct periodic compliance on-site agency reviews of the files of all contracts awarded pursuant to Section 8(a) authority.

■ 41. Amend § 124.513 as follows:

■ a. Revise paragraph (c)(2);

■ b. Redesignate paragraphs (c)(3) through (c)(11) as (c)(4) through (c)(12),

■ c. Adding a new paragraph (c)(3);

■ d. Revise newly designated paragraphs (c)(4) and (c)(7);

■ e. Remove the phrase "the managing venturer" from newly designated paragraphs (c)(9) and (c)(10) and add in its place the phrase "the 8(a) Participant managing venturer";

■ f. Revise paragraphs (d) and (e); and

■ g. Add a new paragraph (i) to read as follows:

§ 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

* * * * *

(c) * * *

(2) Designating an 8(a) Participant as the managing venturer of the joint venture. In an unpopulated joint venture or a joint venture populated only with administrative personnel, the joint venture must designate an employee of the 8(a) managing venturer as the project manager responsible for performance of the contract. In a joint venture populated with individuals intended to perform any contracts awarded to the joint venture, the joint venture must otherwise demonstrate that performance of the contract is controlled by the 8(a) managing venturer;

(3) Stating that with respect to a separate legal entity joint venture the 8(a) Participant(s) must own at least 51% of the joint venture entity;

(4) Stating that the 8(a) Participant(s) must receive profits from the joint venture commensurate with the work performed by the 8(a) Participant(s), or in the case of a separate legal entity joint venture commensurate with their ownership interests in the joint venture;

* * * * *

(7) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the 8(a) partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section.

* * * * *

(d) *Performance of work.* (1) For any 8(a) contract, including those between mentors and protégés authorized by § 124.520, the joint venture must perform the applicable percentage of work required by § 124.510. For an unpopulated joint venture or a joint venture populated only with one or more administrative personnel, the 8(a) partner(s) to the joint venture must perform at least 40% of the work performed by the joint venture. The work performed by 8(a) partners to a joint venture must be more than administrative or ministerial functions so that they gain substantive experience. For a joint venture populated with individuals intended to perform contracts awarded to the joint venture, each 8(a) Participant to the joint venture must demonstrate what it will gain from performance of the contract and how such performance will assist in its business development.

(2)(i) In an unpopulated joint venture, where both the 8(a) and non-8(a) partners are technically subcontractors, the amount of work done by the partners will be aggregated and the work done by the 8(a) partner(s) must be at least 40% of the total done by all partners. In determining the amount of work done by a non-8(a) partner, all work done by the non-8(a) partner and any of its affiliates at any subcontracting tier will be counted.

(ii) In a populated joint venture, a non-8(a) joint venture partner, or any of

its affiliates, may not act as a subcontractor to the joint venture awardee, or to any other subcontractor of the joint venture, unless the AA/BD determines that other potential subcontractors are not available, or the joint venture is populated only with administrative personnel.

(A) If a non-8(a) joint venture partner seeks to do more work, the additional work must generally be done through the joint venture, which would require the 8(a) partner(s) to the joint venture to also do additional work to meet the 40% requirement set forth in paragraph (d)(1) of this section.

(B) If a joint venture is populated only with administrative personnel, the joint venture may subcontract performance to a non-8(a) joint venture partner provided it also subcontracts work to the 8(a) partner(s) in an amount sufficient to meet the 40% requirement. The amount of work done by the partners will be aggregated and the work done by the 8(a) partner(s) must be at least 40% of the total done by all partners. In determining the amount of work done by a non-8(a) partner, all work done by the non-8(a) partner and any of its affiliates at any subcontracting tier will be counted.

(e) *Prior approval by SBA.* (1) SBA must approve a joint venture agreement prior to the award of an 8(a) contract on behalf of the joint venture.

(2) Where a joint venture has been established and approved by SBA for one 8(a) contract, a second or third 8(a) contract may be awarded to that joint venture provided an addendum to the joint venture agreement, setting forth the performance requirements on that second or third contract, is provided to and approved by SBA prior to contract award.

(i) After approving the structure of the joint venture in connection with the first contract, SBA will review only the addendums relating to performance of work on successive contracts.

(ii) SBA must approve the addendums prior to the award of any successive 8(a) contract to the joint venture.

* * * * *

(i) *Performance of work reports.* An 8(a) Participant to a joint venture must describe how it is meeting or has met the applicable performance of work requirements for each 8(a) contract it performs as a joint venture.

(1) As part of its annual review, the 8(a) Participant(s) to the joint venture must explain for each 8(a) contract performed during the year how the performance of work requirements are being met for the contract.

(2) At the completion of every 8(a) contract awarded to a joint venture, the 8(a) Participant(s) to the joint venture must submit a report to the local SBA district office explaining how the performance of work requirements were met for the contract.

■ 42. Amend § 124.519 by revising paragraph (a), by removing paragraph (c), by redesignating paragraphs (d), (e) and (f) as paragraphs (c), (d) and (e), respectively, and by revising newly designated paragraph (e) to read as follows:

§ 124.519 Are there any dollar limits on the amount of 8(a) contracts that a Participant may receive?

(a) A Participant (other than one owned by an Indian Tribe, ANC or NHO) may not receive sole source 8(a) contract awards where it has received a combined total of competitive and sole source 8(a) contracts in excess of the dollar amount set forth in this section during its participation in the 8(a) BD program.

* * * * *

(e) The AA/BD may waive the requirement prohibiting a Participant from receiving sole source 8(a) contracts in excess of the dollar amount set forth in this section where the head of a procuring activity represents that award of a sole source 8(a) contract to the Participant is needed to achieve significant interests of the Government.

■ 43. Amend § 124.520 as follows:
■ a. Revise the heading;
■ b. Revise paragraph (a);
■ c. Revise paragraph (b) introductory text;
■ d. Revise paragraphs (b)(1)(i) and (iv), (b)(2), and (b)(3);
■ e. Revise paragraphs (c)(1) and (c)(3);
■ f. Add new paragraphs (c)(4) and (c)(5);
■ g. Revise paragraph (d)(1);
■ h. Revise paragraph (e)(1), and the second sentence of (e)(2);
■ i. Redesignate paragraph (f) as paragraph (g) and add new paragraph (f);
■ j. Redesignate newly designated paragraphs (g)(2) and (g)(3) as paragraphs (g)(3) and (g)(4);
■ k. Add a new paragraph (g)(2); and
■ l. Add a new paragraph (h) to read as follows:

§ 124.520 What are the rules governing SBA's Mentor/Protégé program?

(a) *General.* The mentor/protégé program is designed to encourage approved mentors to provide various forms of business development assistance to protégé firms. This assistance may include technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts; and/or assistance in performing prime contracts with the Government through joint venture arrangements. Mentors are encouraged to provide assistance relating to the performance of non-8(a) contracts so that protégé firms may more fully develop their capabilities. The purpose of the mentor/protégé relationship is to enhance the capabilities of the protégé, assist the protégé with meeting the goals established in its SBA-approved business plan, and to improve its ability to successfully compete for contracts.

(b) *Mentors.* Any concern or non-profit entity that demonstrates a commitment and the ability to assist developing 8(a) Participants may act as a mentor and receive benefits as set forth in this section. This includes businesses that have graduated from the 8(a) BD program, firms that are in the transitional stage of program participation, other small businesses, and large businesses.

(1) * * *

(i) Possesses favorable financial health; * * *

(iv) Can impart value to a protégé firm due to lessons learned and practical experience gained because of the 8(a) BD program, or through its knowledge of general business operations and government contracting.

(2) Generally a mentor will have no more than one protégé at a time. However, the AA/BD may authorize a concern or non-profit entity to mentor more than one protégé at a time where it can demonstrate that the additional mentor/protégé relationship will not adversely affect the development of either protégé firm (*e.g.,* the second firm may not be a competitor of the first firm). Under no circumstances will a mentor be permitted to have more than three protégés at one time.

(3) In order to demonstrate its favorable financial health, a firm seeking to be a mentor must submit to SBA for review copies of the Federal tax returns it submitted to the IRS, or audited financial statements, including any notes, or in the case of publicly traded concerns the filings required by the Securities and Exchange Commission for the past three years.

* * * * *

(c) *Protégés.* (1) In order to initially qualify as a protégé firm, a Participant must:

(i) Be in the developmental stage of program participation; or

(ii) Have never received an 8(a) contract; or

(iii) Have a size that is less than half the size standard corresponding to its primary NAICS code.

(2) * * *

(3) A protégé firm may generally have only one mentor at a time. The AA/BD may approve a second mentor for a particular protégé firm where:

(i) The second relationship pertains to an unrelated, secondary NAICS code;

(ii) The protégé firm is seeking to acquire a specific expertise that the first mentor does not possess; and

(iii) The second relationship will not compete or otherwise conflict with the business development assistance set forth in the first mentor/protégé relationship.

(4) A protégé may not become a mentor and retain its protégé status. The protégé must terminate its mentor/protégé agreement with its mentor before it will be approved as a mentor to another 8(a) Participant.

(5) SBA will not approve a mentor/protégé relationship for an 8(a) Participant with less than six months remaining in its program term.

(d) * * *

(1) A mentor and protégé may joint venture as a small business for any government prime contract or subcontract, including procurements with a dollar value less than half the size standard corresponding to the assigned NAICS code and 8(a) sole source contracts, provided the protégé qualifies as small for the procurement and, for purposes of 8(a) sole source requirements, the protégé has not reached the dollar limit set forth in § 124.519.

(i) SBA must approve the mentor/protégé agreement before the two firms may submit an offer as a joint venture on a particular government prime contract or subcontract in order for the joint venture to receive the exclusion from affiliation.

(ii) In order to receive the exclusion from affiliation for both 8(a) and non-8(a) procurements, the joint venture must meet the requirements set forth in § 124.513(c).

(iii) Once a protégé firm graduates from or otherwise leaves the 8(a) BD program, it will not be eligible for any further benefits from its mentor/protégé relationship (*i.e.,* the receipts and/or employees of the protégé and mentor will generally be aggregated in determining size for any joint venture between the mentor and protégé after the protégé leaves the 8(a) BD program). Leaving the 8(a) BD program, or terminating the mentor/protégé relationship while a protégé firm is still in the program, does not, however, affect contracts previously awarded to a joint venture between the protégé and its mentor. In such a case, the joint venture continues to qualify as small for previously awarded contracts and is obligated to continue performance on those contracts.

* * * * *

(e) * * *

(1) The mentor and protégé firms must enter a written agreement setting forth an assessment of the protégé's needs and providing a detailed description and timeline for the delivery of the assistance the mentor commits to provide to address those needs (*e.g.,* management and/or technical assistance, loans and/or equity investments, cooperation on joint venture projects, or subcontracts under prime contracts being performed by the mentor). The mentor/protégé agreement must:

(i) Address how the assistance to be provided through the agreement will help the protégé firm meet the goals established in its SBA-approved business plan;

(ii) Establish a single point of contact in the mentor concern who is responsible for managing and implementing the mentor/protégé agreement; and

(iii) Provide that the mentor will provide such assistance to the protégé firm for at least one year.

(2) * * * The agreement will not be approved if SBA determines that the assistance to be provided is not sufficient to promote any real developmental gains to the protégé, or if SBA determines that the agreement is merely a vehicle to enable the mentor to receive 8(a) contracts.

* * * * *

(f) *Decision to decline mentor/protégé relationship.* (1) Where SBA declines to approve a specific mentor/protégé agreement, the protégé may request the AA/BD to reconsider the Agency's initial decline decision by filing a request for reconsideration with its servicing SBA district office within 45 calendar days of receiving notice that its mentor/protégé agreement was declined. The protégé may revise the proposed mentor/protégé agreement and provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline to its servicing district office.

(2) The AA/BD will issue a written decision within 45 calendar days of receipt of the protégé's request. The AA/BD may approve the mentor/protégé agreement, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the AA/BD will explain why the mentor/protégé agreement does not meet the requirements of § 124.520 and give specific reasons for the decline.

(3) If the AA/BD declines the mentor/protégé agreement solely on issues not raised in the initial decline, the protégé can ask for reconsideration as if it were an initial decline.

(4) If SBA's final decision is to decline a specific mentor/protégé agreement, the 8(a) firm seeking to be a protégé cannot attempt to enter another mentor/protégé relationship with the same mentor for a period of 60 calendar days from the date of the final decision. The 8(a) firm may, however, submit another proposed mentor/protégé agreement with a different proposed mentor at any time after the SBA's final decline decision.

(g) * * *

(2) The protégé must report the mentoring services it receives by category and hours.

* * * * *

(h) *Consequences of not providing assistance set forth in the mentor/protégé agreement.* (1) Where SBA determines that a mentor has not provided to the protégé firm the business development assistance set forth in its mentor/protégé agreement, SBA will notify the mentor of such determination and afford the mentor an opportunity to respond. The mentor must respond within 30 days of the notification, explaining why it has not provided the agreed upon assistance and setting forth a definitive plan as to when it will provide such assistance. If the mentor fails to respond, does not supply adequate reasons for its failure to provide the agreed upon assistance, or does not set forth a definite plan to provide the assistance:

(i) SBA will terminate its mentor/protégé agreement;

(ii) The firm will be ineligible to again act as a mentor for a period of two years from the date SBA terminates the mentor/protégé agreement; and

(iii) SBA may recommend to the relevant procuring agency to issue a stop work order for each Federal contract for which the mentor and protégé are performing as a small business joint venture pursuant to paragraph (d)(1) of this section in order to encourage the mentor to comply with its mentor/protégé agreement. Where a protégé firm is able to independently complete performance of any such contract, SBA may also authorize a substitution of the protégé firm for the joint venture.

(2) SBA may consider a mentor's failure to comply with the terms and conditions of an SBA-approved mentor/protégé agreement as a basis for debarment on the grounds, including but not limited to, that the mentor has not complied with the terms of a public agreement under 2 CFR 180.800(b).

■ 44. Amend § 124.601 by revising paragraph (a) to read as follows:

§ 124.601 What reports does SBA require concerning parties who assist Participants in obtaining Federal contracts?

(a) Each Participant must submit semi-annually a written report to its assigned BOS that includes a listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such Participant in obtaining or seeking to obtain a Federal contract. The listing must indicate the amount of compensation paid and a description of the activities performed for such compensation.

* * * * *

■ 45. Amend § 124.602 as follows:
■ a. Revise paragraph (a) introductory text;
■ b. Redesignate paragraphs (a)(1) and (a)(2) as paragraphs (a)(3) and (a)(4), respectively;
■ c. Add new paragraph (a)(1) and (a)(2);
■ d. Revise paragraphs (b) and (c); and
■ e. Add new paragraph (g) to read as follows:

§ 124.602 What kind of annual financial statement must a Participant submit to SBA?

(a) Except as set forth in paragraph (a)(1) of this section, Participants with gross annual receipts of more than $10,000,000 must submit to SBA audited annual financial statements prepared by a licensed independent public accountant within 120 days after the close of the concern's fiscal year.

(1) Participants with gross annual receipts of more than $10,000,000 which are owned by a Tribe, ANC, NHO, or CDC may elect to submit unaudited financial statements within 120 days after the close of the concern's fiscal year, provided the following additional documents are submitted simultaneously:

(i) Audited annual financial statements for the parent company owner of the Participant, prepared by a licensed independent public accountant, for the equivalent fiscal year;

(ii) Certification from the Participant's Chief Executive Officer and Chief Financial Officer (or comparable positions) that each individual has read the unaudited financial statements, affirms that the statements do not contain any material misstatements, and certifying that the statements fairly represent the Participant's financial condition and result of operations.

(2) In the first year that a Participant's gross receipts exceed $10,000,000, a Participant may provide an audited balance sheet, with the income and cash flow statements receiving the level of service required for the previous year (review or none, depending on sales the year before the audit is required). * * *

(b)(1) Participants with gross annual receipts between $2,000,000 and $10,000,000 must submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant within 90 days after the close of the concern's fiscal year.

(2) The servicing SBA District Director may waive the requirement for reviewed financial statements for good cause shown by the Participant.

(c) Participants with gross annual receipts of less than $2,000,000 must submit to SBA an annual statement prepared in-house or a compilation statement prepared by a licensed independent public accountant, verified as to accuracy by an authorized officer, partner, limited liability member, or sole proprietor of the Participant, including signature and date, within 90 days after the close of the concern's fiscal year.

* * * * *

(g) Participants owned by Tribes, ANCs, NHOs and CDCs may submit consolidated financial statements prepared by the parent entity that include schedules for each 8(a) Participant instead of separate audited financial statements for each individual 8(a) Participant. If one Participant must submit an audited financial statement, then the consolidated statement and the schedules for each 8(a) Participant must be audited.

■ 46. Add a new § 124.604 to read as follows:

§ 124.604 Report of benefits for firms owned by Tribes, ANCs, NHOs and CDCs.

As part of its annual review submission, each Participant owned by a Tribe, ANC, NHO or CDC must submit to SBA information showing how the Tribe, ANC, NHO or CDC has provided benefits to the Tribal or native members and/or the Tribal, native or other community due to the Tribe's/ANC's/NHO's/CDC's participation in the 8(a) BD program through one or more firms. This data includes information relating to funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services provided by the Tribe, ANC, NHO or CDC to the affected community.

■ 47. Amend § 124.1002 by revising paragraph (d) and adding a new paragraph (h) to read as follows:

§ 124.1002 What is a Small Disadvantaged Business (SDB)?

* * * * *

(d) *Additional eligibility criteria.* (1) Except for Tribes, ANCs, CDCs, and NHOs, each individual claiming disadvantaged status must be a citizen of the United States.

(2) The other eligibility requirements set forth in § 124.108 for 8(a) BD program participation do not apply to SDB eligibility.

* * * * *

(h) *Full-time requirement for SDB purposes.* An SDB is considered to be managed on a full-time basis by a disadvantaged individual if such individual works for the concern during all of the hours the concern operates. For example, if a concern operates 20 hours per week and the disadvantaged manager works for the firm during those twenty hours, that individual will be considered as working full time for the firm.

■ 48. Revise § 124.1009 to read as follows:

§ 124.1009 Who decides disadvantaged status protests?

In response to a protest challenging the disadvantaged status of a concern, the SBA's AA/BD, or designee, will determine whether the concern is disadvantaged.

Dated: February 1, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–2581 Filed 2–10–11; 8:45 am]

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