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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–10–0051; NOP–10–04FR]

RIN 0581–AD04

National Organic Program; Amendment to the National List of Allowed and Prohibited Substances (Livestock)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is adopting as final, without change, an interim rule published in the **Federal Register** on August 24, 2010 (75 FR 51919). The interim rule amended the National List of Allowed and Prohibited Substances (National List) based upon a recommendation submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on April 29, 2010. Consistent with the recommendation from the NOSB, the interim rule revised the annotation of one substance on the National List, methionine, to extend its use in organic poultry production until October 1, 2012, at the following maximum levels of synthetic methionine per ton of feed: laying chickens—4 pounds; broiler chickens—5 pounds; turkeys and all other poultry—6 pounds.

DATES: *Effective Date:* This rule becomes effective March 15, 2011.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250, *E-mail: Melissa.bailey@ams.usda.gov; Telephone:* (202) 720–3252; *Fax:* (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established within the NOP [7 CFR part 205] the National List regulations §§ 205.600 through 205.607. The National List identifies synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies nonagricultural nonsynthetic, nonagricultural synthetic, and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6522), and NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance for organic production and handling unless included on the National List. Section 205.105 also requires that any nonorganic agricultural, and any nonsynthetic, nonagricultural substance used in organic handling must also be on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the NOP has published fourteen amendments to the National List: October 31, 2003 (68 FR 61987); November 3, 2003(68 FR 62215); October 21, 2005 (70 FR 61217); June 7, 2006 (71 FR 32803); September 11, 2006 (71 FR 53299); June 27, 2007 (72 FR 35137); October 16, 2007 (72 FR 58469); December 10, 2007 (72 FR 69569); December 12, 2007 (72 FR 70479); September 18, 2008 (73 FR 54057); October 9, 2008 (73 FR 59479); July 6, 2010 (75 FR 38693); August 24, 2010 (75 FR 51919); and December 13, 2010 (75 FR 77521). Additionally, proposed amendments to the National List were published on November 8, 2010 (75 FR 68505).

As a result of a petition requesting to add synthetic methionine to the National List, the NOSB initiated a review of this substance in 1999. Methionine is classified as an essential amino acid because it cannot be biologically produced by poultry and is necessary to maintain viability. The petitioners asserted that methionine was a necessary dietary supplement for organic poultry and that there was an inadequate supply of allowable organic feeds containing sufficient concentrations of naturally occurring methionine. In 2001, the NOSB evaluated a technical advisory panel analysis of methionine against the criteria provided in the OFPA (7 U.S.C. 6517–6518), and determined that the use of synthetic methionine feed supplementation is compatible with a system of organic poultry production. Consistent with the NOSB's recommendation, the Secretary amended the National List to allow methionine as a synthetic substance for use in organic poultry production at § 205.603 of the NOP regulations beginning on October 31, 2003, with an expiration date of October 21, 2005 (68 FR 61987). Based upon additional NOSB recommendations submitted in March 2005 and May 2008, the Secretary subsequently amended the listing for methionine on the National List by extending its allowance in organic poultry production through October 21, 2008 (70 FR 61217), and again through October 1, 2010 (73 FR 54057).

On July 31, 2009, a coalition of producers identified as the Methionine Task Force (MTF) filed a petition that requested a five-year extension on the allowance for synthetic methionine. The MTF proposed to limit the total amount of synthetic methionine to be fed over the life of the bird calculated as the average pounds of synthetic methionine per ton of feed. The MTF proposed these limits per ton of feed as follows: 4 pounds for laying chickens, 5 pounds for broiler chickens, and 6 pounds for turkeys and all other poultry. Based upon their deliberations and the public comment received, the NOSB concluded that wholly natural sources of methionine are not currently available and that extending the allowance for the synthetic form of methionine was warranted. However, the NOSB did not accept the request to extend its allowance on the National List for five years at the limitations proposed by the petitioners because the NOSB felt that averaging the pounds of synthetic methionine fed over the life of the bird could result in higher levels of the substance being fed during certain growth stages. As a result, the NOSB opted to modify the annotation

proposed by the petitioner by removing the language that would have allowed averaging the maximum level of methionine over the life of the bird and adding different limits on the feed allowance over time. On April 29, 2010, the NOSB issued a recommendation to extend the allowance for synthetic methionine for five years until October 1, 2015, with a step down in the amount allowed after two years. Specifically, the NOSB recommended that the amount of synthetic methionine allowed per ton of feed be limited to 4 pounds for laying chickens, 5 pounds for broiler chickens, and 6 pounds for turkeys and all other poultry until October 1, 2012. The NOSB further recommended that, after October 1, 2012, the allowance be reduced to 2 pounds for laying chickens, 2 pounds for broiler chickens, and 3 pounds for turkeys and all other poultry through October 1, 2015.

On August 24, 2010, the Secretary amended the National List through publication of an interim rule with request for comments in the **Federal Register** to reflect the first part of the NOSB's recommendation (75 FR 51919). This action extended the allowance for synthetic methionine through October 1, 2012, at the levels specified by the NOSB. In the interim rule, the USDA agreed to publish a final rule on the listing of methionine, along with any changes if warranted, by March 2011.

Based upon the NOSB recommendation and comments received, this final rule adopts, without change, the interim rule published on August 24, 2010 (75 FR 51919). Accordingly, this final rule continues the exemption at § 205.603(d)(1) for methionine as follows: DL-Methionine, DL- Methionine-hydroxy analog, and DL-Methionine-hydroxy analog calcium (CAS # 59–51–8; 63–68–3; 348–67–4)—for use only in organic poultry production until October 1, 2012, at the following maximum levels of synthetic methionine per ton of feed: Laying chickens—4 pounds; broiler chickens—5 pounds; turkeys and all other poultry—6 pounds.

II. Related Documents

Since September 2001, four notices have been published announcing meetings of the NOSB and its planned deliberations on recommendations involving the use of methionine in organic poultry production. The four notices were published in the **Federal Register** as follows: September 21, 2001 (66 FR 48654), February 11, 2005 (70 FR 7224), April 4, 2008 (73 FR 18491), and March 17, 2010 (75 FR 12723).

Methionine was first proposed for addition to the National List in the **Federal Register** on April 16, 2003 (68 FR 18556). Methionine was added to the National List by final rule in the **Federal Register** on October 31, 2003 (68 FR 61987). A proposal to amend the annotation for methionine was published in the **Federal Register** on July 29, 2005 (70 FR 43786), and the annotation was amended by final rule in the **Federal Register** on October 21, 2005 (70 FR 61217). A proposal to amend the annotation once again was published in the **Federal Register** on July 14, 2008 (73 FR 40197), and the annotation was amended by final rule on September 18, 2008 (73 FR 54057). The annotation for methionine was most recently amended through publication of an interim rule with request for comments in the **Federal Register** on August 24, 2010 (75 FR 51919).

III. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501–6522), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop.*

A. Executive Order 12866

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

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule (68 FR 61987), dated October 31, 2003, adding methionine to the National List was reviewed under this Executive Order and no additional information related to Executive Order 12988 has been obtained since then. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to

consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this final rule would not be significant. The current approval for the use of synthetic methionine in organic poultry production was extended in the interim rule through October 1, 2012, at levels that are consistent with current industry practice. The effect of this final rule is to affirm the continued use of synthetic methionine as amended. AMS concludes that this action would have minimal economic impact on small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on USDA data from the Economic Research Service (ERS), the U.S. organic sector included nearly 13,000 certified organic crop and livestock operations at the end of 2008. These operations contained more than 4.8 million certified acres consisting of 2,665,382 acres of cropland and 2,160,577 acres of pasture and rangeland. The total acreage under organic management represents a twelve percent increase from 2007. Organic poultry production has steadily contributed to the overall growth in the organic food market. ERS estimated that there were 5,538,011 laying chickens and 9,015,984 broiler chickens raised under organic management in 2008. ERS estimated the number of certified organic turkeys raised in the United States in 2008 at 398,531.[1] The Nutrition Business Journal calculated the market value for organic laying chickens at $252,000,000 in 2008.[2] In addition to being sold as whole products, organic eggs and poultry byproducts are used in the production of organic processed products including soups, broths, prepared meals, ice cream and eggnog.

The USDA accredits certifying agents who provide organic certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* or OMB's implementing regulations at 5 CFR part 1320.

The AMS is committed to compliance with the E–Government Act, to promote the use of the Internet and other information technologies increased opportunities for citizen access to Government information and services, and for other purposes.

E. Discussion of Comments Received

AMS received 8 comments on the interim rule that extended the use of synthetic methionine in organic poultry production until October 1, 2012, at the following maximum levels of synthetic methionine per ton of feed: laying chickens—4 pounds; broiler chickens—5 pounds; turkeys and all other poultry—6 pounds. Comments were received from two organic livestock producers including one representing multiple individuals, two trade associations, two non-profit advocacy groups and two private individuals.

Some comments endorsed the amendment that extended the allowance for synthetic methionine. These commenters asserted that continuing the allowance was critical to the organic poultry industry, citing methionine as a nutrient necessary for proper feather development and cell growth. These comments further voiced that, while research continues on meeting the nutritional requirements of poultry through natural sources of methionine, the limited commercial availability of feed containing natural sources of methionine supports the need for continuing the allowance of synthetic forms of the substance on the National List.

One comment strongly advocated for future inclusion of synthetic methionine on the National List for a five-year sunset review cycle after the October 1, 2015, expiration of the current petition-based NOSB recommendation. The interim rule for which we requested comments does not address the listing of methionine beyond its current expiration date of October 1, 2012. We plan to address the allowance for synthetic methionine after this date through a separate rulemaking action.

Changes Requested But Not Made

Two comments in favor of extending the use of methionine did not believe the limitations for use in different types of poultry as specified in the interim rule are necessary. One of these comments indicated concern that limiting the use of methionine to certain levels may impact the management practices of poultry producers by reducing the flexibility of producers to balance poultry rations with changing environmental conditions. However, based upon additional statements provided in this comment and testimony provided during NOSB deliberations, we believe that maximum levels in the interim rule are consistent with current industry practice and, therefore, will be feasible for most producers without major changes to their current management approach. The other comment related to limiting the allowable levels of methionine in specific groups of poultry recommended relisting methionine without annotation. The rationale provided by the comment is that the future "step down" proposed by the NOSB has the potential for increased recordkeeping by the producer and the certification agency. Because the action in the interim rule did not address the "step down" portion of the NOSB recommendation, this rationale does not apply to the current amendment and, therefore, we do not believe a change to the annotation as codified in the interim rule is warranted.

A few comments rejected the provisions in the amendment and argued in favor of an immediate prohibition on the use of synthetic

[1] U.S. Department of Agriculture, Economic Research Service, 2009. Data Sets: *U.S. Certified Organic Farmland Acreage, Livestock Numbers and Farm Operations, 1992–2008. http://www.ers.usda.gov/Data/Organic/.*

[2] *Nutrition Business Journal, 2009. U.S. Organic Food Sales by Product ($Mil) 1997–2008, 2009(e)–2014(e)—Chart 22.* Penton Media, Inc.

methionine in organic poultry production. One comment did not express an opinion pertinent to the specifics of the amendment. The few comments opposing the extension of the allowance for synthetic methionine stated that use of the substance was incompatible with the regulatory definition of "organic production." Another comment objecting to extending the allowance questioned whether OFPA sanctions the use of a synthetic amino acid. This comment also cited natural alternatives to synthetic methionine and suggested that the continued allowance of synthetic methionine continues to delay the commercial development of alternatives to the synthetic form.

In developing their recommendation on the continued allowance for synthetic methionine on the National List, the NOSB reviewed the substance against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA. The NOSB recommended that, after October 1, 2012, the annotation for methionine be amended to reduce the maximum amount of the substance allowed and establish October 1, 2015, as the expiration date. The NOSB's intent is that a step down in the levels allowed after October 1, 2012, will stimulate further market development of natural alternatives and drive management changes in the organic poultry industry. We plan to address this step down through a future rulemaking action. We believe that the current amendment should remain as codified in the interim rule. At this time, the record supports the rationale of the NOSB that synthetic methionine remains critical in organic poultry production and that its removal from the National List would have significant adverse impacts on the industry.

Two comments maintained that adequate wholly natural sources of methionine are in fact available and suggested that these alternatives should be sufficient for organic poultry production. The NOSB considered the availability of such alternatives in development of their recommendation and, based upon the public comment received, determined that alternatives are not available in sufficient quantities to meet the needs of the organic poultry industry. We concur with the NOSB's finding and, therefore, disagree with the comments suggesting that there are presently viable alternatives to justify removal of synthetic methionine from the National List.

After full consideration of these comments, we have determined that the record supports retaining the provisions in the interim rule to extend the use of synthetic methionine in organic poultry production until October 1, 2012, at the following maximum levels of synthetic methionine per ton of feed: laying chickens—4 pounds; broiler chickens—5 pounds; turkeys and all other poultry—6 pounds. This provision remains consistent with the NOSB's April 29, 2010 recommendation.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

PART 205—NATIONAL ORGANIC PROGRAM

Accordingly, the interim rule amending 7 CFR part 205, subpart G published at 75 FR 51919 on August 24, 2010, is adopted as a final rule without change.

Dated: March 4, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–5716 Filed 3–11–11; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 708a and 708b

RIN 3133–AD84; 3133–AD85

Conversions of Insured Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is confirming as final a December 23, 2010, interim final rule on the definition of the phrase "Regional Director" in NCUA's rule on credit union to mutual savings bank conversions. For clarification purposes, this rule modifies the aforementioned definition.

DATES: This rule is effective March 14, 2011.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lussier, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

In 2009, the NCUA Board created the NCUA Office of Consumer Protection (OCP) to become operational on January 1, 2010. NCUA is in the process of moving responsibility for the review and approval of certain types of credit union conversions from the Regional Directors to the Director of the OCP, including credit union conversions to mutual savings banks or mutual savings associations (MSBs) in 12 CFR part 708a and the conversion from National Credit Union Share Insurance Fund (NCUSIF) share insurance to nonfederal share insurance in 12 CFR part 708b. To accommodate this reassignment of staff functions, the NCUA Board issued an interim final rule in December 2010, adding the Director of the OCP to the definition of the phrase "Regional Director" in part 708a and adding a new definition of the phrase "Regional Director" to part 708b that mirrors the revised definition in part 708a. 75 FR 80678 (Dec. 23, 2010).

NCUA received one comment letter that supported inclusion of the Director of the OCP in the definition of "Regional Director" in parts 708a and 708b.

Final Rule

The interim final rule instructed the Office of Federal Register (OFR) to amend § 708a.1 (now § 708a.101) [1] of part 708a by adding a definition of "Regional Director" to include the Director of the OCP. The interim final rule, however, should have instructed the OFR that § 708a.1 (now § 708a.101) be amended not by adding a new definition but rather by revising the existing definition of "Regional Director." This final rule confirms the December 23, 2010, interim rule as final and instructs the OFR that the existing definition of "Regional Director" in § 708a.101 be revised to include the Director of the OCP.

Immediate Effective Date

NCUA is issuing this rulemaking as a final rule effective upon publication in the **Federal Register.** The Administrative Procedure Act (APA), 5 U.S.C. 553, requires that a final rule must have a delayed effective date of 30 days from the date of publication, except for good cause. In this regard, NCUA believes the 30-day delayed effective date is inapplicable because the amendments to parts 708a and 708b are not substantive but merely update the regulation to provide NCUA with

[1] In December 2010, the NCUA Board issued a final rule that, in part, reorganized part 708a into subparts A through C and redesignated the existing section numbers in subpart A as §§ 708a.101 through 708a.113. 75 FR 81378 (Dec. 28, 2010). As reorganized, subpart A applies to conversions of federally-insured credit unions to MSBs and former § 708a.1 is now numbered § 708a.101. That final rule became effective on January 27, 2011.

additional administrative flexibility. As such, the final rule is not subject to the 30-day delayed effective date requirement.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (those under $10 million in assets). 5 U.S.C. 603(a). Only a few credit unions convert in a given year. Accordingly, the NCUA Board certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d). For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or disclosure requirement, each referred to as an information collection. The revised definition does not impose any new paperwork burden.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act, 5 U.S.C. 551. The Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that this final rule is not a major rule for purposes of SBREFA.

List of Subjects

12 CFR Part 708a

Charter conversions, Credit unions.

12 CFR Part 708b

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

By the National Credit Union Administration Board on March 7, 2011.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated in the preamble, the National Credit Union Administration confirms as final the interim rule, which amended 12 CFR parts 708a and 708b, and was published December 23, 2010, at 75 FR 80678, with the following changes:

PART 708a—BANK CONVERSIONS AND MERGERS

■ 1. The authority citation for part 708a continues to read as follows:

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

■ 2. In § 708a.101, revise the definition of *regional director* to read as follows:

§ 708a.101 Definitions.

* * * * *

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

* * * * *

[FR Doc. 2011–5675 Filed 3–11–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1030; Airspace Docket No. 10–AGL–18]

Amendment of Class E Airspace; La Porte, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in the geographic coordinates of a final rule published in the **Federal Register** February 1, 2011, that amends Class E airspace in the La Porte, IN area.

DATES: Effective date 0901 UTC May 5, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On February 1, 2011, the FAA published in the **Federal Register** a final rule amending Class E airspace in the La Porte, IN area (76 FR 5471), Docket No. FAA–2010–1030. Subsequent to publication, errors were discovered in the geographic coordinates for the La Porte Hospital Heliport point in space and the La Porte NDB. This action corrects these coordinates.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, on page 5472, column one, in the airspace description, under La Porte NDB, remove "lat. 41°29′56″ N., long. 86°46′17″ W.", and insert "lat. 41°29′56″ N., long. 86°46′16″ W.".

On page 5472, column one, in the regulatory text, remove "* * * and within a 6-mile radius of the La Porte Hospital point in space at lat. 41°29′56″ N., long. 86°46′17″ W." and insert "and within a 6-mile radius of the La Porte Hospital point in space at lat. 41°36′11″ N., long. 86°44′10″ W."

Issued in Fort Worth, Texas, on March 4, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–5744 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2011–0008]

RIN 0960–AH29

Protecting the Public and Our Employees in Our Hearing Process

AGENCY: Social Security Administration.

ACTION: Interim final rules with request for comments.

SUMMARY: We are clarifying our regulatory procedures to ensure the safety of the public and our employees in our hearing process. Due to increasing reports of threats to our hearing office employees, we are taking steps to explicitly increase the level of protection we provide to our staff and to the public during the hearing process. We expect these changes to result in a safer work environment for our employees, while at the same time ensuring that our claimants continue to receive a full and fair hearing on their claims for benefits.

DATES: *Effective Date:* This final rule is effective March 14, 2011.

Comment date: To ensure that your comments are considered, we must receive them no later than May 13, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2011–0008 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as SSN or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2011–0008. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Glen Colvin, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041–3260, 703–605–8444, for information about this final rule. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We touch the lives of virtually every American, often during times of personal hardship, transition, and uncertainty. In FY2010, we had 45 million visits to our field offices, 738,000 hearings before an administrative law judge (ALJ), and over 67 million calls to our 800 number. Most interactions occur without incident, and 90% of visitors responding to our annual surveys rated the service as excellent, very good or good. However, some people who visit or call our offices make inappropriate statements to and against our employees. Unfortunately, some people go beyond verbal threats and physically assault our employees and guards. As our workloads have risen in recent years, the number of reported threats to our employees has increased significantly. In FY2010, we received 2,777 reports of threats to our employees across all offices, an increase of 43% from FY2009. We take these incidents very seriously, and we promptly investigate them and refer them to law enforcement for further action, when appropriate. We have increased security measures in our field and hearing offices and are using the resources provided by Congress to handle benefit claims more quickly and accurately. We expect these actions will minimize the anxiety that claimants may experience when they seek disability benefits from us. In deciding what further actions we should take, we must balance the risks to the public and our employees against our service delivery obligations.

We are addressing concerns about security agency-wide, and many of the actions we are taking do not require regulatory changes. However, some of the actions we need to take require us to change the regulations that govern our hearing process.

Explanation of Changes

Agencies have the inherent authority to enforce reasonable restrictions on access to Federally owned property. In addition, courts have held that an individual's right of access to Federal property can reasonably be limited in the interest of public safety.[1] In developing these final rules, we are balancing the individual's right to obtain services against the threat that the individual poses to the safety of our employees and our visitors.

In these final rules, we describe the process we will follow when one of our hearing office employees requests that we provide additional security at a hearing because the claimant or another individual poses a threat to the safety of our employees or other participants in the hearing. When one of our employees makes such a request, the Hearing Office Chief Administrative Law Judge (HOCALJ) will determine whether the individual poses a reasonable threat to the safety of our employees or other participants in the hearing. The HOCALJ will make this finding when he or she determines that the individual has made a threat and there is a reasonable likelihood that the claimant or other individual could act on the threat. The threats that we will consider under these procedures would include, but are not limited to, a declaration of intent to injure another person, or deface or destroy property by some unlawful act. For example, we would use the procedures in these rules when a claimant or other individual makes a threat of physical harm or death against the ALJ, the ALJ's family, Social Security employees, the claimant's

[1] *See Downing* v. *Kunzig,* 454 F.2d 1230, 1232 (6th Cir. 1972) (noting that, "federal buildings housing federal courts and other governmental agencies are designed to be used strictly for governmental purposes. Although members of the public ordinarily have free access to such buildings, * * * responsible agencies are free to adopt and enforce reasonable rules restricting such public use. * * *"); *cf. United States* v. *Cassiagnol,* 420 F.2d 868, 875 (4th Cir. 1970) ("Even where government property is generally open to the public, reasonable nondiscriminatory regulation is appropriate to prevent interference with the designated and intended governmental use thereof.")

representative, the witnesses at a hearing, the disability determination services, or the security staff in the hearing office.

The HOCALJ will determine whether the individual poses a reasonable threat to the safety of our employees or other participants in the hearing based on the available evidence and after consultation with the presiding ALJ. Based on the HOCALJ's finding, we will take the necessary steps to protect the public and our employees. In making this finding, the HOCALJ will consider the evidence in the claimant's record and any other information we have regarding the claimant's or other individual's past conduct. If the HOCALJ determines that the individual poses a reasonable threat to the safety of our employees or other participants in the hearing, we will either require the presence of a guard at the hearing or require that the claimant's hearing be held by video or telephone. We expect to exercise this authority infrequently; the vast majority of hearings will continue to be conducted under our standard procedures.

In some cases, because of the claimant's past actions, we will have banned him or her from our facilities. If we have banned a claimant from any of our facilities, he or she will be provided with the opportunity for a telephone hearing, at which he or she may testify and question any witnesses. While the Social Security Act provides a claimant with the opportunity for a hearing, we believe that, under these extraordinary circumstances, the opportunity for a telephone hearing fulfills this mandate.

The HOCALJ's findings as to whether or not an individual poses a reasonable threat and how we will conduct the hearing are not initial determinations and not subject to further review under 20 CFR 404.903 and 416.1403.

Clarity of These Rules

Executive Order 12866 as supplemented by Executive Order 13563 requires each agency to write all rules in plain language. In addition to your substantive comments on this final rule, we invite your comments on how to make rules easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

When will we start to use this rule?

We will start to use this final rule on the date shown under the "Effective Date" section earlier in this preamble. However, we are also inviting public comments on the changes made by this rule. We will consider any relevant comments we receive, and plan to publish another final rule document to respond to any such comments we receive, and to make any changes to the rules as appropriate based on the comments.

Regulatory Procedures

Justification for Issuing Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when developing regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that good cause exists for dispensing with the notice and public comment procedures for this rule. 5 U.S.C. 553(b)(B).

As we noted above, the number of reported threats to our employees and property has risen dramatically in recent years. In light of this increase, we believe we must take immediate action in order to implement this rule as quickly as possible. The changes we are making in these final rules will increase our ability to protect our claimants, employees, and other visitors to our hearing offices, while at the same time ensuring that claimants are provided with the opportunity for a full and fair hearing. Accordingly, we find that prior public comment would be contrary to the public interest. However, we are inviting public comment on these final rules and will consider any substantive comments we receive within 60 days of the publication of these final rules.

In addition, for the reasons cited above, we also find good cause for dispensing with the 30-day delay in the effective date of this rule provided for in 5 U.S.C. 553(d)(3). For the reasons stated above, we find it contrary to the public interest to delay the effective date of the changes we are making in this final rule. Accordingly, we are making this final rule effective upon publication.

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this interim final rule meets the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the final rule.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities as it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, disability benefits; Old-age, Survivors and disability insurance; Reporting and recordkeeping requirements; Social security.

20 CFR Part 416

Administrative practice and procedure; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: March 8, 2011.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons stated in the preamble, we are amending subpart J of part 404 and subpart N of part 416 of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–____)

Subpart J—[Amended].

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Add § 404.937 to read as follows:

§ 404.937 Protecting the safety of the public and our employees in our hearing process.

(a) Notwithstanding any other provision in this part or part 422 of this chapter, we are establishing the procedures set out in this section to ensure the safety of the public and our employees in our hearing process.

(b)(1) At the request of any hearing office employee, the Hearing Office Chief Administrative Law Judge will determine, after consultation with the presiding administrative law judge, whether a claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing. The Hearing Office Chief Administrative Law Judge will find that a claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing when he or she determines that the individual has made a threat and there is a reasonable likelihood that the claimant or other individual could act on the threat. In making a finding under this paragraph, the Hearing Office Chief Administrative Law Judge will consider all relevant evidence, including any information we have in the claimant's record and any information we have regarding the claimant's or other individual's past conduct.

(2) If the Hearing Office Chief Administrative Law Judge determines that the claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing, the Hearing Office Chief Administrative Law Judge will either:

(i) Require the presence of a security guard at the hearing; or

(ii) Require that the hearing be conducted by video teleconference or by telephone.

(c) If we have banned a claimant from any of our facilities, we will provide the claimant with the opportunity for a hearing that will be conducted by telephone.

(d) The actions of the Hearing Office Chief Administrative Law Judge taken under this section are final and not subject to further review.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended].

■ 3. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. Add § 416.1437 to read as follows:

§ 416.1437 Protecting the safety of the public and our employees in our hearing process.

(a) Notwithstanding any other provision in this part or part 422 of this chapter, we are establishing the procedures set out in this section to ensure the safety of the public and our employees in our hearing process.

(b)(1) At the request of any hearing office employee, the Hearing Office Chief Administrative Law Judge will determine, after consultation with the presiding administrative law judge, whether a claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing. The Hearing Office Chief Administrative Law Judge will find that a claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing when he or she determines that the individual has made a threat and there is a reasonable likelihood that the claimant or other individual could act on the threat. In making a finding under this paragraph, the Hearing Office Chief Administrative Law Judge will consider all relevant evidence, including any information we have in the claimant's record and any information we have regarding the claimant's or other individual's past conduct.

(2) If the Hearing Office Chief Administrative Law Judge determines that the claimant or other individual poses a reasonable threat to the safety of our employees or other participants in the hearing, the Hearing Office Chief Administrative Law Judge will either:

(i) Require the presence of a security guard at the hearing; or

(ii) Require that the hearing be conducted by video teleconference or by telephone.

(c) If we have banned a claimant from any of our facilities, we will provide the claimant with the opportunity for a hearing that will be conducted by telephone.

(d) The actions of the Hearing Office Chief Administrative Law Judge taken under this section are final and not subject to further review.

[FR Doc. 2011–5750 Filed 3–11–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 3

[Docket No. USCG–2009–0929]

RIN 1625–ZA29

Ninth Coast Guard District Sector Realignment; Northern Lake Michigan and Lake Huron

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

SUMMARY: This rule makes nonsubstantive, technical changes to Title 33 of the CFR to reflect the realignment of boundaries shared among Sector Lake Michigan, Sector Detroit, and Sector Sault Ste. Marie. This action is taken to rebalance workload and span of control among Ninth District sector commands. These changes affect internal Coast Guard organization and functioning only and will have no substantive effect on mariners or other members of the public.

DATES: This final rule is effective at 12:00:01 EDT on April 1, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0929 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0929 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 Mr. Doug McCann, Ninth District Resources Planning Branch, U.S. Coast Guard, telephone 216–902–6008, e-mail *douglas.a.mccann@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 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 rule involves "agency organization" or 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)(A), the Coast Guard finds that with respect to this rule the requirement to publish a notice of proposed rulemaking (NPRM) does not apply because these changes merely involve agency organization. Also, the Coast Guard finds, under 5 U.S.C. 553(b)(B), that good cause exists for not publishing an NPRM with respect to this rule because it is unnecessary. Comments are unnecessary because they would not change the Coast Guard's internal delegation of authority or duties among the Ninth District's sector commands nor would they provide expertise regarding Coast Guard functions.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because these changes affect internal Coast Guard organization and functioning only and will have no substantive effect on the public.

Background and Purpose

On July 2, 2007, in order to reflect the establishment of the new system of sector commands, the Coast Guard extensively revised 33 CFR part 3. That revision included various changes to the Coast Guard's internal organization to include the reassignment of Station Charlevoix and Station Alpena from Group Sault Ste. Marie to Sectors Lake Michigan and Detroit, respectively. That reassignment was done in order to have all units on Lake Michigan assigned to one sector and all units on Lake Huron assigned to another. The Coast Guard has decided, however, to further adjust sector boundaries to provide a more balanced workload and span of control among Ninth District sectors. An effect of this boundary adjustment is that Stations Charlevoix and Alpena will be reassigned to Sector Sault Ste. Marie.

In addition to balancing workload and span of control, this realignment will also enhance planning and coordination with our maritime partners. Specifically, these changes will align Ninth District sectors more closely with Customs and Border Protection, Immigration and Customs Enforcement, Environmental Protection Agency, Chippewa Ottawa Resource Authority, and the Tri-County 911 Center servicing Charlevoix, Cheboygan, and Emmet counties. This alignment is expected to improve cooperation, consistency, and efficiency in maritime security, safety, and environmental response. This rule is not intended or expected to require any new actions on the part of the public.

Discussion of Rule

Generally, this rule expands Sector Sault Ste. Marie's Area of Responsibility (AOR). Its new AOR will encompass Grand Traverse Bay, other northern portions of Lake Michigan, and additional portions of northern Lake Huron. To accomplish this realignment, this rule amends 33 CFR 3.45–15, 3.45–20, and 3.45–45, which define the boundaries of Sector Lake Michigan, Sector Detroit, and Sector Sault Ste. Marie respectively.

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. As this rule involves internal agency organization and non-substantive changes, it will not impose any costs on the public.

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. This rule does not require a general notice of proposed rulemaking and therefore, is exempt from the requirements of the Regulatory Flexibility Act.

Although this rule is exempt, we have reviewed this rule for potential economic impacts on small entities. We found that that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities because it involves internal agency organization and non-substantive changes.

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 will not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(b), of the Instruction. This rule concerns Coast Guard internal functions and organization in that it redefines certain sector boundaries. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 3 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

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

Authority: 14 U.S.C. 92; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1, para. 2(23).

■ 2. Revise § 3.45–15 to read as follows:

§ 3.45–15 Sector Lake Michigan Marine Inspection Zone and Captain of the Port Zone.

Sector Lake Michigan's office is located in Milwaukee, WI. The boundaries of Sector Lake Michigan's Marine Inspection Zone and Captain of the Port Zone include all navigable waters of the United States and contiguous land areas within the boundaries of an area starting from a point at latitude 44°43′00″ N, longitude 84°30′00″ W, proceeding due west to longitude 85°40′00″ W; thence northwest to the eastern shore of Lake Michigan at latitude 45°01′00″ N; thence northwest to latitude 45°22′30″ N, longitude 86°19′00″ W; thence northeast to latitude 45°41′00″ N, longitude 86°06′00″ W; thence northwest to latitude 46°20′00″ N, longitude 87°22′00″ W; thence west to latitude 46°20′00″ N, longitude 90°00′00″ W; thence south to latitude 41°00′00″ N; thence east to the Ohio-Indiana border at latitude 41°00′00″ N, longitude 84°48′12″ W; thence north along the Ohio-Indiana border to the intersection of the Ohio-Indiana-Michigan border at latitude 41°41′59″ N, longitude 84°48′22″ W; thence east along the Ohio-Michigan border to latitude 41°42′13″ N, longitude 84°30′00″ W; thence north to the start point.

■ 3. Revise § 3.45–20 to read as follows:

§ 3.45–20 Sector Detroit Marine Inspection Zone and Captain of the Port Zone.

Sector Detroit's office is located in Detroit, MI. The boundaries of Sector Detroit's Marine Inspection Zone and Captain of the Port Zone include all navigable waters of the United States and contiguous land areas within the boundaries of an area starting from a point at latitude 41°00′00″ N, longitude 84°48′12″ W on the Ohio-Indiana boundary, proceeding east to longitude 82°25′00″ W; thence north to the international boundary in Lake Erie at latitude 41°40′36″ N, longitude 82°25′00″ W; thence north along the international boundary to latitude 44°43′00″ N in Lake Huron; thence due west to latitude 44°43′00″ N, longitude 84°30′00″ W; thence south to the Michigan-Ohio boundary at latitude 41°42′13″ N; thence west along the Michigan-Ohio boundary to the Ohio-Michigan-Indiana boundary at latitude 41°41′46″ N, longitude 84°48′22″ W; thence south along the Ohio-Indiana boundary to the starting point.

■ 4. Revise § 3.45–45 to read as follows:

§ 3.45–45 Sector Sault Ste. Marie Marine Inspection Zone and Captain of the Port Zone; Marine Safety Unit Duluth.

Sector Sault Ste. Marie's office is located in Sault Ste. Marie, MI. A subordinate unit, Marine Safety Unit (MSU) Duluth, is located in Duluth, MN.

(a) Sector Sault Ste. Marie's Marine Inspection Zone and Captain of the Port Zone comprise all navigable waters of the United States and contiguous land areas within an area starting from a point at latitude 44°43′00″ N on the international boundary within Lake Huron; proceeding due west to longitude 85°40′00″ W; thence northwest to the eastern shore of Lake Michigan at latitude 45°01′00″ N; thence northwest to latitude 45°22′30″ N, longitude 86°19′00″ W; thence northeast to latitude 45°41′00″ N, longitude 86°06′00″ W; thence northwest to latitude 46°20′00″ N, longitude 87°22′00″ W; thence west to the Minnesota-North Dakota boundary at latitude 46°20′00″ N, longitude 96°36′30″ W; thence north along the Minnesota-North Dakota boundary to the intersection of the Minnesota-North Dakota boundary and the international boundary at latitude 49°00′02″ N, longitude 97°13′46″ W; thence east along the international boundary to the starting point; and in addition, all the area described in paragraph (b) of this section.

(b) The boundaries of the MSU Duluth Marine Inspection and Captain of the Port Zones comprise all navigable

waters of the United States and contiguous land areas within an area starting at a point latitude 46°20′00″ N, longitude 88°30′00″ W, proceeding west to the Minnesota-North Dakota boundary at latitude 46°20′00″ N, longitude 96°36′30″ W; thence north along the Minnesota-North Dakota boundary to the intersection of the Minnesota-North Dakota boundary and the international boundary at latitude 49°00′02″ N, longitude 97°13′46″ W; thence east along the international boundary to a point at latitude 47°59′23″ N, longitude 87°35′10″ W; thence south to a point near Manitou Island Light at latitude 47°25′09″ N, longitude 87°35′10″ W; thence southwest to a point near the shore of Lake Superior at latitude 46°51′51″ N, longitude 87°45′00″ W; thence southwest to the point of origin.

Dated: March 7, 2011.

Kathryn A. Sinniger,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2011–5731 Filed 3–11–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0903; FRL–9278–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the Open Burning Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions recodify the open burning regulations which are currently in the Virginia SIP. There are no substantive changes to the rule. EPA is approving these revisions to Virginia's open burning regulations in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on May 13, 2011 without further notice, unless EPA receives adverse written comment by April 13, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0903 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: frankford.harold@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0903, Harold A. Frankford, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0903. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittals are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On September 27, 2010, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of the recodification of its open burning regulations.

II. Summary of SIP Revision

The recodification moves the Commonwealth's SIP-approved open burning regulations from 9VAC5, Chapter 140, Part II Article 40 to a new 9VAC5 Chapter 130, Part I. The following table summarizes the current and new Virginia Administrative Code (VAC) citations for these regulations:

Regulation title	Current Virginia SIP citation in 9VAC5 chapter 40, part II, article 40	Revised Virginia SIP citation in 9VAC5 chapter 130, part I
Applicability	5–40–5600	5–130–10
Definitions	5–40–5610	5–130–20
Open Burning Prohibitions	5–40–5620	5–130–30
Permissible Open Burning	5–40–5630	5–130–40

Regulation title	Current Virginia SIP citation in 9VAC5 chapter 40, part II, article 40	Revised Virginia SIP citation in 9VAC5 chapter 130, part I
Forest Management and Agricultural Practices	5–40–5631	5–130–50

The changes in text to these regulations are administrative in nature; there are no substantive changes from the current SIP-approved regulatory text.

III. General Information Pertaining to Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Section 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Section 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Section 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the recodification of Virginia's SIP-approved open burning regulations from 9VAC5 Chapter 40, Part II, Article 40 to the open burning regulations cited in 9VAC5 Chapter 130. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 13, 2011 without further notice unless EPA receives adverse comment by April 13, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 13, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action to recodify Virginia's SIP-approved open burning regulations may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 1, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by removing the category for Article 40 and adding a category for Chapter 130 after the existing entry for 5–91–800, to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9VAC5, Chapter 130 Regulations for Open Burning [Formerly 9VAC5 Chapter 40, Part II, Article 40]				
Part I General Provisions				
5–130–10	Applicability	3/18/09	3/14/11 [*Insert page number where the document begins*].	Formerly 5–40–5600 Provisions of Article 40 are applicable only in the Northern Virginia and Richmond Emissions Control Areas as defined in 9 VAC 5–20–206.
5–130–20	Definitions	3/18/09	3/14/11 [*Insert page number where the document begins*].	Formerly 5–40–5610.
5–130–30	Open Burning Prohibitions	3/18/09	3/14/11 [*Insert page number where the document begins*].	Formerly 5–40–5620.
5–130–40	Permissible Open Burning	3/18/09	3/14/11 [*Insert page number where the document begins*].	Formerly 5–40–5630.

EPA–APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–130–50	Forest Management and Agricultural Practices.	3/18/09	3/14/11 [*Insert page number where the document begins*].	Formerly 5–40–5631.
*	*	*	*	* * *

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[FR Doc. 2011–5625 Filed 3–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0334; FRL–9279–8]

RIN 2060–AQ89

National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule to stay the requirement for certain affected sources to comply with the title V permit program during the pendency of the reconsideration process. On June 15, 2010, EPA notified Petitioners that the Agency intended to initiate the reconsideration process in response to their request for reconsideration of certain provisions in the National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources. Among the provisions EPA is reconsidering is a requirement that certain affected sources obtain a permit.

On December 14, 2010, EPA issued a 90-day stay of the requirement for certain affected sources to comply with the title V permit program. Because we believed that the reconsideration process would not be completed within 90 days, we concurrently proposed to stay the provision requiring certain sources to obtain a permit until the final reconsideration rule is published in the **Federal Register**. After considering the comments received, EPA is promulgating the stay of compliance through this final rule.

DATES: This final rule is effective on March 14, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0334. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov,* or in hard copy at the EPA Docket Center, Public Reading Room, 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 Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Nick Parsons, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Refining and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5372; fax number: (919) 541–0246; e-mail address: *parsons.nick@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The EPA published final National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources (CMAS) on October 29, 2009. 40 CFR part 63, subpart VVVVVV (74 FR 56008). Included in the final rule was a new provision that stated "[a]ny source that was a major source and installed a control device on a CMPU [1] after November 15, 1990, and, as a result, became an area source under 40 CFR part 63 is required to obtain a permit under 40 CFR part 70 or 40 CFR part 71." See 40 CFR 63.11494(e).

On February 12, 2010, the American Chemistry Council and the Society of Chemical Manufacturers and Affiliates (collectively referred to as "Petitioners") sought reconsideration of six provisions in the final rule, including the provision requiring certain sources to obtain a title V permit. On June 15, 2010, EPA notified Petitioners that the Agency intended to initiate the reconsideration process. EPA also separately notified Petitioners that the provision requiring certain sources to obtain a title V permit was among the provisions for which EPA would grant reconsideration.

By letter dated October 28, 2010, Petitioners requested a stay of the requirement to comply with the title V permit program, specifically the requirement to submit a title V permit application, pending completion of the reconsideration process. Petitioners stated in their letter that they were requesting the stay because EPA has yet to initiate the reconsideration process, and, "under one interpretation of EPA's [40 CFR part 70 and 40 CFR part 71] regulations, existing sources must file Title V permit applications [by] October 29, 2010." Petitioners maintained that it would be unreasonable and inequitable to require facilities to prepare and submit title V applications at the same time that EPA is reconsidering the requirement to obtain a title V permit.

On December 14, 2010, we issued a 90-day stay of the requirement for certain sources to obtain a title V permit, and we concurrently proposed extending the stay beyond the 90-day period until the reconsideration process is completed (75 FR 77760 and 75 FR 77799). As explained in the proposal notice, we proposed the stay because facilities had no chance to comment on this new requirement in the final rule, and because we are reconsidering the title V permitting requirement. Furthermore, because we cannot prejudge the outcome of the reconsideration process, we stated that a limited stay during the duration of the administrative reconsideration process is appropriate so that sources are not incurring the cost associated with applying for a title V permit in advance of our final decision on the issue.

II. What action is EPA taking?

We are issuing a stay of the provision in 40 CFR 63.11494(e) that requires "[a]ny source that was a major source and installed a control device on a CMPU after November 15, 1990, and, as a result, became an area source under 40 CFR part 63 is required to obtain a

[1] Chemical Manufacturing Process Unit.

permit under 40 CFR part 70 or 40 CFR part 71" until the final reconsideration rule is published in the **Federal Register**.

III. What are the major comments and responses to those comments?

We received five comments in support of the proposed stay. In addition, four of the commenters also provided comments objecting to EPA finalizing the title V permit requirement as part of our reconsideration. Because we received no adverse comment on the proposed stay of the title V permitting requirement, we are taking final action to extend the stay until the final reconsideration rule is published in the **Federal Register**. This action deals only with the stay. We will discuss and request comment on the title V permitting issue in the forthcoming reconsideration notice.

IV. What are the changes since proposal?

No changes have been made to the proposed stay (75 FR 77799). Thus, the final rule is identical to the proposed rule.

V. What are the impacts of the final rule?

The stay will not change the estimated environmental and cost impacts of the rule because it does not apply to the control requirements in the rule. However, the burden associated with conducting activities related to preparing permit applications will, at a minimum, be delayed for the duration of the stay.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action," and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials, as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues, as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Pursuant to the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any new requirements on small entities. This action also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 29, 2009, **Federal Register** document.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this notice and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The stay of these particular provisions in 40 CFR part 63, subpart VVVVVV is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 14, 2011.

List of Subjects in 40 CFR Part 63

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

Dated: March 8, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

§ 63.11494 [STAYED IN PART]

■ 2. In § 63.11494, paragraph (e) is stayed from March 14, 2011, until further notice.

[FR Doc. 2011–5778 Filed 3–11–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1430–IFC]

RIN 0938–AQ92

Medicare Program; Revisions to the Reductions and Increases to Hospitals' FTE Resident Caps for Graduate Medical Education Payment Purposes

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements section 203 of the Medicare and Medicaid Extenders Act of 2010 relating to the treatment of teaching hospitals that are members of the same Medicare graduate medical education affiliated groups for the purpose of determining possible full-time equivalent resident cap reductions.

DATES: *Effective Date:* These regulations are effective on March 14, 2011.

Comment Date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 13, 2011.

ADDRESSES: In commenting, please refer to file code CMS–1430–IFC. 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 "Submit a comment" instructions.

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–1430–IFC, P.O. Box 8013, Baltimore, MD 21244–8013.

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–1430–IFC, 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) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

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

A. Statutory Authority

Section 1886(h) of the Act, as added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272) and as currently implemented in the regulations at 42 CFR 413.75 through 413.83, establishes a methodology for determining payments to hospitals for the direct costs of approved graduate medical education (GME) programs. Section 1886(h)(2) of the Act sets forth a methodology for the determination of a hospital-specific base-period per resident amount (PRA) that is calculated by dividing a hospital's allowable direct costs of GME in a base period by its number of residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, October 1, 1983 through September 30, 1984). The base year PRA is updated annually for inflation. In general, Medicare direct GME payments are calculated by multiplying the hospital's updated PRA by the weighted number of full-time equivalent (FTE) residents working in all areas of the hospital complex (and at nonprovider sites, when applicable), and the hospital's Medicare share of total inpatient days.

Section 1886(d)(5)(B) of the Act provides for an additional payment amount under the hospital inpatient prospective payment system (IPPS) for hospitals that have residents in an approved GME program in order to account for the higher indirect patient care costs of teaching hospitals relative to nonteaching hospitals. The regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at 42 CFR 412.105. The hospital's IME adjustment applied to the DRG payments is calculated based on the ratio of the hospital's number of FTE residents training in either the inpatient or outpatient departments of the IPPS hospital to the number of inpatient hospital beds.

The Balanced Budget Act of 1997 (Pub. L. 105–33) established a limit on the number of allopathic and osteopathic residents that a hospital may include in its FTE resident count for direct GME and IME payment purposes. Under section 1886(h)(4)(F) of the Act, for cost reporting periods beginning on or after October 1, 1997, a hospital's unweighted FTE count of residents for purposes of direct GME may not exceed the hospital's unweighted FTE count for its most recent cost reporting period ending on or before December 31, 1996. Under section 1886(d)(5)(B)(v) of the Act, a similar limit on the FTE resident count for IME purposes is effective for discharges occurring on or after October 1, 1997.

The recently enacted Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to in this document as the Affordable Care Act) made a number of statutory changes relating to the determination of a hospital's FTE resident count for direct GME and IME payment purposes and the manner in which FTE resident limits are calculated and applied to hospitals under certain circumstances. Section 5503 of the Affordable Care Act added a new section 1886(h)(8) to the Act to provide for the reduction in FTE resident caps for direct GME under Medicare for certain hospitals, and to authorize the "redistribution" of the estimated number of FTE resident slots to other qualified hospitals. In addition, section 5503 amended section 1886(d)(5)(B)(v) of the Act to require the application of section 1886(h)(8) of the Act provisions "in the same manner" as the FTE resident caps for IME. The regulations implementing section 5503 of the Affordable Care Act were included in the Outpatient Prospective Payment System (PPS) Final Rule, published on November 24, 2010 in the **Federal Register** (75 FR 72147). The section below summarizes the provisions of section 5503 of the Affordable Care Act as implemented in

the November 24, 2010 **Federal Register**.

B. Reductions and Increases to Hospitals' FTE Resident Caps for GME Payment Purposes Under Section 5503 of the Affordable Care Act

As previously discussed, the calculation of both direct GME and IME payments is affected by the number of FTE residents that a hospital is allowed to count; generally, the greater the number of FTE residents a hospital counts, the greater the amount of Medicare direct GME and IME payments the hospital will receive. In an attempt to end the implicit incentive for hospitals to increase the number of FTE residents, Congress instituted a cap on the number of allopathic and osteopathic residents a hospital is allowed to count for direct GME and IME purposes. Dental and podiatric residents are not included in this statutorily mandated cap. Some hospitals have trained a number of allopathic and osteopathic residents in excess of their FTE resident caps, while other hospitals have reduced their FTE resident counts to some level below their FTE resident caps. Section 5503 of the Affordable Care Act added a new section 1886(h)(8) to the Act to provide for reductions in the statutory FTE resident caps for direct GME under Medicare for certain hospitals, and authorizes a "redistribution" to hospitals of the estimated number of FTE resident slots resulting from the reductions. Section 5503 of the Affordable Care Act also amended section 1886(d)(5)(B)(v) of the Act to require application of the provisions of 1886(h)(8) of the Act "in the same manner" to the FTE resident caps for IME.

The new section 1886(h)(8)(A) of the Act provides that, effective for portions of cost reporting periods occurring on or after July 1, 2011, a hospital's FTE resident cap will be reduced if its "reference resident level" is less than its "otherwise applicable resident limit," as these terms are described below. Section 1886(h)(8)(A)(ii) of the Act and the November 24, 2010 **Federal Register** (75 FR 72147) describes which hospitals are exempt from a cap reduction under section 5503 of the Affordable Care Act. Included in that group are rural hospitals with fewer than 250 acute care inpatient beds. For other hospitals, any such reduction will be equal to 65 percent of the difference between the hospital's "otherwise applicable resident limit" and its "reference resident level."

Under section 1886(h)(8)(B) of the Act, the Secretary is authorized to increase the FTE resident caps for certain categories of hospitals for portions of cost reporting periods occurring on or after July 1, 2011, by an aggregate number that does not exceed the estimated overall reduction in FTE resident caps for all hospitals under section 1886(h)(8)(A) of the Act. A single hospital may receive an increase in its FTE resident cap of no more than 75 additional FTEs. That is, a hospital would be allowed to receive up to 75 additional slots for direct GME and up to 75 additional slots for IME. In determining which hospitals would receive an increase in their FTE resident caps, sections 1886(h)(8)(C) through 1886(h)(8)(E) of the Act directs us to do all of the following:

- Take into account the demonstrated likelihood of the hospital filling the additional positions within the first three cost reporting periods beginning on or after July 1, 2011.
- Take into account whether the hospital has an accredited rural training track program.
- Distribute 70 percent of the resident slots to hospitals located in States with resident-to-population ratios in the lowest quartile.
- Distribute 30 percent of the resident slots to hospitals located in a State, a territory of the United States, or the District of Columbia that are among the top 10 States, territories, or Districts in terms of the ratio of the total population living in an area designated as a health professional shortage area (HSPA), as of March 23, 2010, to the total population, and/or to hospitals located in rural areas.

A comprehensive description of the rules implementing the cap slot redistribution under section 1886(h)(8) of the Act can be found in the November 24, 2010 **Federal Register** (75 FR 72168).

C. Treatment of Affiliated Groups Under Section 5503 of the Affordable Care Act

A previous redistribution of "unused" FTE resident slots was performed in 2005 under section 422 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173). Section 422 of the MMA provided for the redistribution of unused residency positions effective for portions of cost reporting periods beginning on or after July 1, 2005. While the redistribution under section 5503 of the Affordable Care Act as initially enacted is similar to the previous redistribution under section 422 of MMA, there are substantive differences between the two provisions. One of those differences involves the treatment of hospitals that were members of the same Medicare GME affiliated groups for purposes of determining whether a hospital should receive a cap reduction. The regulations governing Medicare GME affiliated groups and Medicare GME affiliation agreements are at 42 CFR 413.75(b) and 413.79(f), respectively. Medicare GME affiliation agreements allow teaching hospitals to temporarily transfer cap slots to other hospitals in order to facilitate the cross training of residents. The duration of the temporary cap slots transfer is a minimum of 1 year beginning on July 1 of a year, per the Medicare GME affiliation agreement.

Under section 422 of MMA, the statute explicitly directed the Secretary to apply the provisions to hospitals that were members of the same Medicare GME affiliated group as of July 1, 2003. Specifically, section 1886(h)(7)(A)(iii) of the Act states "The provisions of clause (i) shall be applied to hospitals which are members of the same Medicare GME affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) as of July 1, 2003." Therefore, in implementing section 422 of MMA, we based the FTE resident cap reductions for hospitals that were participating in a Medicare GME affiliated group on the aggregate cap and count data from all hospitals participating in the same Medicare GME affiliated group(s). If a hospital was training a number of residents below its FTE resident cap for the reference cost reporting period but the hospital was part of a Medicare GME affiliated group for some or all of that reference cost reporting period, the Medicare contractor determined if the aggregate affiliated count for all hospitals in the Medicare GME affiliated group was greater than the aggregate affiliated cap. If the aggregate affiliated count was greater than the aggregate cap, then there was no reduction made to the FTE caps of any hospital in the Medicare GME affiliated group (even for the hospital that was part of the Medicare GME affiliated group, but was training below its cap).

However, as we noted in the November 24, 2010 **Federal Register** (75 FR 72161), in contrast to section 422 of MMA, section 5503 of the Affordable Care Act as initially enacted did not include language specific to Medicare GME affiliated groups as was included in section 422 of MMA under section 1886(h)(7)(A)(iii) of the Act. Thus, section 5503 of the Affordable Care Act as initially enacted did not provide for determinations based on the aggregate experience of a Medicare GME affiliated group. Therefore, we stated in the November 24, 2010 **Federal Register** (75 FR 72161), that the determination of whether a hospital would receive a cap reduction based on that individual

hospital's experience and not the aggregate experience of the Medicare GME affiliated group.

D. Section 203 of the Medicare and Medicaid Extenders Act of 2010 (P.L. 111–309)

Section 203 of the Medicare and Medicaid Extenders Act of 2010 (MMEA) further amended section 1886(h)(8) of the Act by adding the following new subparagraph:

(I) Affiliation.—The provisions of this paragraph shall be applied to hospitals which are members of the same affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) and the reference resident level for each such hospital shall be the reference resident level with respect to the cost reporting period that results in the smallest difference between the reference resident level and the otherwise applicable resident limit.

This paragraph refers to the treatment of hospitals that are members of the same Medicare GME affiliated groups, as described in section C of this interim final rule for purposes of determining a hospital's possible cap reductions under section 1886(h)(8)(A) of the Act. Similar to section 422 of MMA, this amendment to the language at section 1886(h)(8) of the Act allows us to consider hospitals that are members of the same Medicare GME affiliated group in the aggregate, rather than only on an individual basis, for the purposes of determining a GME FTE cap reduction.

Although this amendment allows us to implement section 5503 of the Affordable Care Act in a manner similar to section 422 of MMA, a key difference in implementation remains. One point of note is that section 422 of MMA, (section 1886(h)(7)(A)(ii)(I) of the Act) refers to the most recent cost reporting period ending on or before September 30, 2002 as the reference cost reporting period. However, as stated in the August 11, 2004 **Federal Register** (69 FR 49125), if a hospital was a member of a Medicare GME affiliated group for the academic year beginning July 1, 2003, then its reference cost reporting period was the cost reporting period that included July 1, 2003. This differs from section 5503 of the Affordable Care Act which instructs the Secretary to choose the reference cost reporting period out of the hospital's three most recent cost reporting periods ending before March 23, 2010 for which a cost report has been settled or has been submitted to the Medicare contractor by March 23, 2010, that has the highest FTE resident count section 1886(h)(8)(H)(i)) of the Act.

For hospitals that were members of the same Medicare GME affiliated groups, the MMEA now allows us to determine the reference cost reporting period as the cost reporting period out of the hospitals three most recent cost reporting periods ending before March 23, 2010 for which a cost report has been settled or has been submitted to the Medicare contractor by March 23, 2010 with the smallest difference between the reference resident level and the otherwise applicable resident limit (section 1886)(h)(8)(I) of the Act). Therefore based on the amendment made to section 1886(h)(8) of the Act by section 203 of the MMEA adding subparagraph (I), we are establishing in this interim final rule with comment period, a methodology to determine whether a hospital is subject to a cap reduction under section 5503 of the Affordable Care Act based on that hospital's participation in a Medicare GME affiliated group(s) or an emergency Medicare GME affiliated group under 42 CFR 413.79(f). Although the MMEA provision applies to both regular Medicare GME affiliation agreements and emergency Medicare GME affiliation agreements, for ease of reference, we will refer in this discussion to both with the term Medicare GME affiliation agreements. We believe the purpose of section 203 of MMEA is to amend section 1886(h)(8) of the Act in order to implement section 5503 of the Affordable Care Act in a manner that is similar to section 422 of MMA with regard to treatment of hospitals that are members of the same Medicare GME affiliated group. Accordingly, we are implementing section 203 of the MMEA in a manner similar to the way in which section 422 of MMA was implemented. The methodology used to determine a cap reduction for hospitals which are members of the same affiliated group is as follows:

Part 1: Determine the "Reference Cost Reporting Period"

The Medicare contractor will assess each hospital on an individual basis. First, the Medicare contractor will determine whether a hospital was a member of a Medicare GME affiliated group at any point during any of the hospital's three most recent cost reporting periods ending before March 23, 2010 for which a cost report has been settled or has been submitted to the Medicare contractor by March 23, 2010. That is, the Medicare contractor will determine whether the caps during any of those three cost reporting periods were revised because the hospital was a member of a Medicare affiliation agreement. If a hospital was not a member of a Medicare GME affiliated group during any of those three cost reporting periods, then the Medicare contractor will determine if and by how much that hospital's FTE resident caps should be reduced in accordance with the policy established in the November 24, 2010 final rule (75 FR 72155 through 72168).

If the Medicare contractor determines that a hospital was a member of a Medicare GME affiliated group at any point during any of the three most recent cost reporting periods ending before March 23, 2010 for which a cost report has been settled or has been submitted to the Medicare contractor by March 23, 2010, then subparagraph (I) applies, and the Medicare contractor will determine a hospital's reference cost reporting period by determining the cost reporting period from the three most recent cost reporting periods ending before March 23, 2010 for which a cost report has been settled or has been submitted to the Medicare contractor by March 23, 2010, that results in the smallest difference between the reference resident level and the otherwise applicable resident limit. For example, a hospital with a FYE of December 31 may not be a member of a Medicare GME affiliated group for the academic years beginning July 1, 2006, 2007, or 2008, but it may be a member of a Medicare GME affiliated group for the academic year beginning July 1, 2005. In the cost reporting period ending December 31, 2006, the months of January through June 2006 would be affected by the July 1, 2005 Medicare GME affiliation agreement. Therefore, in this example, the hospital is indeed a member of a Medicare GME affiliated group at some point, albeit for only a portion of a cost reporting period, during its three most recent cost reporting periods ending before March 23, 2010 for which a cost report has been settled or has been submitted to the Medicare contractor by March 23, 2010 (in this case, these cost reporting periods would include FYE 12/31/08, FYE 12/31/07, and FYE 12/31/06), and as such its reference cost reporting period would be determined as the cost reporting period that results in the smallest difference between the reference resident level and the otherwise applicable resident limit. As previously discussed, section 422 of the MMA specified a single time period that would be used for all hospitals that were members of a Medicare GME affiliated group; that is as of July 1, 2003. However, section 5503 of the Affordable Care Act does not specify one cost reporting period, but rather it specifies that the reference cost

reporting period is one out of three possible cost reporting periods. For a hospital that was a member of a Medicare GME affiliated group at any point during any of the three applicable cost reporting periods, after determining the cost report that is a hospital's reference cost reporting period based on the cost report that results in the smallest difference between the reference resident level and the otherwise applicable resident limit, to determine whether there are any excess slots we believe it is appropriate to consider whether a hospital was a member of a Medicare GME affiliated group as of July 1 of that reference cost reporting period. The hospital may or may not have been a member of a Medicare GME affiliated group during that reference cost reporting period. We do not believe that section 1886(h)(8)(I) of the Act, as added by section 203 of the MMEA, requires that a hospital must be a member of a Medicare GME affiliated group during all 3 cost reporting periods, nor during the year determined to be the reference cost reporting period. Rather, being a member of a Medicare GME affiliated group at some point in just one of the three cost reporting periods warrants that a hospital's reference cost reporting period be determined based on which cost report has the smallest difference between the reference resident level and the otherwise applicable resident limit. To determine if an FTE resident cap reduction is appropriate, if the hospital was a member of a Medicare GME affiliated group as of July 1 in the reference cost reporting period, we will look at the Medicare GME affiliated group in the aggregate, when we determine if the subject hospital has excess capacity for purposes of a reduction under sections 5503 and 203. If the hospital was not a member of a Medicare GME affiliated group as of July 1 in the reference cost reporting period, excess FTEs training at other members of the affiliated group will not be considered for the purposes of a reduction under sections 5503 and 203 and that hospital's FTE resident caps should be reduced in accordance with the policy established for hospitals that are not members of Medicare GME affiliated groups in the November 24, 2010 final rule (75 FR 72155 through 72168). The nature of this determination underscores the fact that reductions to the FTE resident caps of hospitals that are members of Medicare GME affiliated groups must still be made on an individual hospital basis. The following is an example of a reference cost reporting period determination. (For ease of illustration, this example focuses on reductions to the IME FTE resident caps only, but the methodology is the same for reductions to the direct GME FTE resident caps):

Hospital A has a FTE resident cap of 10 FTE residents. Hospital A's three most recent cost reports that have been settled or submitted to the Medicare contractor by March 23, 2010 include cost reporting periods with FYE 12/31/2006, 12/31/2007, and 12/31/2008. During these three cost reporting periods, Hospital A trained 8, 9, and 9 FTE residents, respectively. For the academic years beginning July 1, 2006 and July 1, 2007, Hospital A was not a member of a Medicare GME affiliated group. However, for the academic year beginning July 1, 2008, Hospital A is affiliated with Hospital B and Hospital C. As a result of its Medicare GME affiliation agreement with Hospitals B and C, Hospital A's adjusted cap or otherwise applicable resident limit is 12 for the academic year beginning July 1, 2008. Thus, when determining the reference cost reporting period for Hospital A, the Medicare contractor would compare the resident level for Hospital A with its otherwise applicable resident limit for each of the cost reporting period as indicated below:

- Cost Reporting Period 1 (01/01/2006–12/31/2006): 10 (FTE Resident Cap) − 8 (FTE Resident Count) = 2.
- Cost Reporting Period 2 (01/01/2007–12/31/2007): 10 (FTE Resident Cap) − 9 (FTE Resident Count) = 1.
- Cost Reporting Period 3 (01/01/2008–12/31/2008): 11 (Adjusted FTE Resident Cap) − 9 (FTE Resident Count) = 2.

(Note that although Hospital A received an increase of 2 FTEs, from 10 to 12, under the Medicare GME affiliation agreement for the academic year beginning July 1, 2008, since Hospital A has a 12/31 fiscal year end, the actual cap adjustment is prorated to half of 2, for an increase to its FTE resident cap of 1, equaling 11). In this example, the smallest difference between the reference resident level and the otherwise applicable resident limit for Hospital A is 1, which occurs in the cost reporting period with FYE 12/31/2007. Thus, Hospital A's reference cost reporting period is 01/01/2007–12/31/2007. Note that Hospital A is not a member of a Medicare GME affiliated group during FYE 12/31/07. The implications of this are discussed below.

Part 2: Determine the Applicable Reductions

For a hospital that was a member of a Medicare GME affiliated group at any point during any of its three most recent cost reporting periods ending before March 23, 2010 for which a cost report has been settled or has been submitted to the Medicare contractor by March 23, 2010, once the Medicare contractor determines that hospital's reference cost reporting period (that is, the cost report with the smallest difference between the hospital's FTE resident cap and FTE resident count), the Medicare contractor must then determine if the hospital was a member of a Medicare GME affiliated group as of the July 1 that occurs during that reference cost reporting period. If not, and the hospital's FTE resident count was equal to or exceeded its FTE resident cap in that reference cost report, then no reduction to its FTE resident cap is made and no further steps are necessary. If that hospital's FTE resident count was less than its FTE resident cap during that reference cost report, then the Medicare contractor would reduce the FTE resident cap by 65 percent of the difference between the FTE resident cap and the FTE resident count.

If the hospital was a member of a Medicare GME affiliated group as of the July 1 that occurs during that reference cost reporting period, the Medicare contractor will look at the members of the Medicare GME affiliated group for that period in the aggregate, for the purpose of determining a reduction to the particular hospital's FTE resident cap. In other words, assuming the Medicare contractor is assessing Hospital X, once it is determined that Hospital X was training residents below its adjusted FTE resident cap as part of a Medicare GME affiliation agreement occurring during Hospital X's reference cost reporting period, the Medicare contractor will treat the hospitals in the Medicare GME affiliated group in the aggregate, but only for the purpose of determining the reduction to Hospital X's FTE resident cap. The Medicare contractor would not actually reduce the FTE resident caps of the other hospitals that were affiliated with Hospital X in that year, since each hospital is evaluated separately, and it may be that the reference cost reporting periods for the other hospitals may not be the same as Hospital X's reference cost reporting period. (It may be that the reference cost reporting period for another hospital is one in which that hospital was not part of a Medicare GME affiliated group, in which case, treatment as a group is not warranted when determining that hospital's FTE cap reduction).

For the hospital that was a member of a Medicare GME affiliated group as of the July 1 that occurs during that

reference cost report, the Medicare contractor will determine for each hospital in the Medicare GME affiliated group respectively its FTE resident cap and FTE resident count (IME and direct GME separately). The Medicare contractor will add each hospital's FTE resident caps (IME and direct GME separately) to determine the aggregate affiliated FTE resident cap. The contractor will then add each hospital's FTE resident count (IME and direct GME separately) to determine the aggregate affiliated FTE resident count. If the aggregate FTE resident counts are equal to or exceed the aggregate FTE resident caps, then no reductions would be made to that particular hospital's FTE resident cap under section 5503 of Affordable Care Act, and no further steps are necessary for that hospital. We emphasize that at this point, it has only been determined that the particular hospital will not be subject to an FTE resident cap reduction—as the FTE resident cap reduction determination is ultimately one that is done on an individual hospital basis, at this point the contractor has not made any determinations regarding the status of the other hospitals that are in the same Medicare GME affiliated group as the particular hospital under review.

However, where the aggregate FTE resident count is below the aggregate FTE resident cap (IME and direct GME separately), a reduction to the particular hospital's FTE resident cap would be necessary. In these cases, for each hospital that is a member of the same Medicare GME affiliated group, the Medicare contractor will determine the following FTE information from the cost report that includes July 1 of the particular hospital's reference cost reporting period:

(1) The "1996" FTE resident cap (as adjusted by new programs, if applicable) for the hospital under review— For IME from Worksheet E, Part A of the Medicare cost report, the sum of lines 3.04 and 3.05. If the hospital's IME FTE resident cap was reduced under section 422 of the MMA, subtract from this sum the amount reported on Worksheet E–3, Part VI, line 13. For direct GME from Worksheet E–3, Part IV of the Medicare cost report, the sum of lines 3.01 and 3.02. If the hospital's direct GME FTE resident cap was reduced under section 422 of the MMA, subtract from this sum the amount reported on Worksheet E–3, Part VI, line 2.

(2) The "affiliated" FTE resident cap for the hospital being assessed—For IME, line 3.07. For direct GME, line 3.04.

(3) The total number of allopathic and osteopathic FTE residents for the hospital being assessed—For IME, line 3.08. For direct GME, line 3.05.

(4) The difference between the aggregate "affiliated" FTE resident cap and the total FTE resident counts for all of the affiliated hospitals—For IME, Σ line 3.08 minus Σ (lines 3.04 + 3.05 − applicable section 422 reduction amount). For direct GME, Σ line 3.05 minus Σ (lines 3.01 + 3.02 − applicable section 422 reduction amount).

(5) For IME, for those hospitals whose FTE resident count from line 3.08 is greater than the "affiliated" FTE resident cap on line 3.07, indicate "zero." For direct GME, for those hospitals whose FTE resident count from line 3.05 is greater than the "affiliated" FTE resident cap on line 3.04, indicate "zero." For IME, for those hospitals whose FTE resident count from line 3.08 is less than the "affiliated" FTE resident cap on line 3.07, determine the difference between the hospital's "affiliated" FTE resident cap and the hospital's FTE resident count, line 3.08 minus line 3.07. For direct GME, for those hospitals whose FTE resident count from line 3.05 is less than the "affiliated" FTE resident cap on line 3.04, determine the difference between the hospital's "affiliated" FTE resident cap and the hospital's FTE resident count, line 3.05 minus line 3.04.

(6) For IME and direct GME separately, to determine the total amount by which the FTE resident counts are below the "affiliated" FTE resident caps and add the amounts determined under step 5 for each hospital that trained fewer residents than its "affiliated" FTE resident caps.

(7) For IME and direct GME separately, determine a pro rata cap reduction for the hospital being assessed by dividing the hospital-specific amount in step 5 by the total amount for all of those hospitals in step 6, and multiply by the amount in step 4. (that is, (step5/step6) × step 4).

(8) For IME and direct GME separately, determine the actual cap reduction for the hospital being assessed by multiplying the pro rata cap reduction from step 7 by 0.65.

(9) For IME and direct GME separately, determine the reduced FTE resident cap for the hospital being assessed by subtracting the actual cap reduction from step 8 from the "1996" FTE resident cap from step 1. This is the hospital's FTE resident cap effective July 1, 2011.

The following is an example of how the reductions to the FTE resident caps will be determined where the FTE resident counts in the aggregate for hospitals that were affiliated as of July 1 of the reference cost reporting period for a particular hospital are below the hospitals' FTE resident caps in the aggregate. For ease of illustration, this example focuses on reductions to the IME caps only, but the methodology is the same for reductions to the direct GME caps.

In this example, the Medicare contractor has determined, using the methodology from Step 1, that the reference cost reporting period (the period with smallest difference between the reference resident level and the otherwise applicable resident limit) for Hospital D is January 1, 2007 to December 31, 2007. The academic year that occurs in this reference cost reporting period begins July 1, 2007. Hospitals D, E, and F are members of a Medicare GME affiliated group for the academic year that begins July 1, 2007. Hospital D is also separately affiliated with Hospitals G and H for the academic year that begins July 1, 2007. Thus, the affiliated group for GME payment purposes, and for purposes of determining possible FTE cap reductions for Hospital D under subparagraph (I) consists of Hospitals D, E, F, G, and H. Hospital E's cost report that includes July 1, 2007 is FYE June 30, 2008. Hospital D's, F's, and G's cost report that includes July 1, 2007 is their FYE December 31, 2007, and Hospital H's cost report that includes July 1, 2007 is its FYE September 30, 2007. Using steps 1 through 9 above, the reduction to the FTE resident caps for Hospital D is determined in the table below.

Hospital	1996 FTE Caps (Step 1)	"Affiliated" FTE cap (Step 2)	FTE Count (Step 3)	Number of FTEs below the "Affiliated" Cap (Step 5)	Pro rate reduction (Step 7)	Actual Cap Reduction (Step 8)	Final FTE Cap (Step 9)
D	115	90	75	−15	−8	−5.2	109.8
E	80	100	125	0	N/A	N/A	N/A
F	120	10	10	0	N/A	N/A	N/A

Hospital	1996 FTE Caps (Step 1)	"Affiliated" FTE cap (Step 2)	FTE Count (Step 3)	Number of FTEs below the "Affiliated" Cap (Step 5)	Pro rate reduction (Step 7)	Actual Cap Reduction (Step 8)	Final FTE Cap (Step 9)
G	95	115	125	0	N/A	N/A	N/A
H	30	125	65	−60	N/A	N/A	N/A
Totals	440	440 Step 4→	400 −40	−75 Step 6↑	N/A	N/A	N/A

In this example, Hospital D's FTE resident count of 75 was 15 less than its "affiliated" FTE resident cap of 90, and Hospital H's FTE resident count of 65 was 60 less than its "affiliated" FTE resident cap of 125 (as determined under step 5). Hospital F's "affiliated" FTE resident cap equaled its FTE resident count. Under this methodology, the fact that Hospitals E and G exceeded their respective "affiliated" FTE resident caps minimizes the reductions to Hospital D's "1996" FTE resident caps through the calculation of a pro rata reduction under step 7.

We note that although Hospital H is also under its cap; its cap is not reduced in this exercise. Under section 5503, the cap reduction determination is calculated individually for each hospital based on its individual reference cost reporting period, so each hospital would be evaluated for a possible reduction separately. Hospital H will be evaluated separately, and it may be that Hospital's H reference cost report may not be its FYE September 30, 2007 cost report, and ultimately, Hospital H may or may not be subject to an FTE resident cap reduction. Thus, under step 8, the actual cap reduction of 5.2 FTEs for Hospital D is determined by taking 65 percent of 8 (rather than 65 percent of 15). As a result, under step 9, Hospital D's final FTE resident cap effective on July 1, 2011 is determined to be 109.8 FTEs.

We also note that the reduction to Hospital D's "1996" FTE resident caps was minimized only because Hospitals E and G exceeded their "affiliated" FTE resident caps. If all hospitals in the Medicare GME affiliated group had trained residents below their "affiliated" FTE resident caps, then a pro rata reduction would not benefit Hospital D. In that case, the "1996" FTE resident caps of Hospital D in the Medicare GME affiliated group would be reduced by 65 percent of the difference between its "affiliated" FTE resident cap and FTE resident count.

We believe this final policy is similar to the method used to implement section 422 of the MMA with regard to hospitals that were members of the same Medicare GME affiliated group in that, as under section 422 of the MMA, we are only treating a hospital as part of a group if the hospital was a member of a Medicare GME affiliation agreement during its reference cost reporting period under section 1886(h)(8) of the Act. In implementing section 203 of the MMEA in this manner, we believe we have addressed the concerns raised by commenters in response to the CY 2011 Outpatient PPS proposed rule (75 FR 46395 August 3, 2010) in that this policy could protect hospitals from a loss of slots if the aggregate counts equal to or exceed the "affiliated" FTE resident caps, and could limit the loss of slots in the instance where a hospital is a member of a Medicare GME affiliated group and the aggregate counts are below the "affiliated" FTE resident caps.

II. Provisions of the Interim Final Rule

As part of the CY 2011 Hospital Outpatient PPS final rule published in the November 24, 2010 **Federal Register** (75 FR 71800), we implemented section 5503 of the Affordable Care Act, which added a new section 1886(h)(8) to the Act. Section 5503 of the Affordable Care Act provides for reductions in the statutory FTE resident caps for direct GME under Medicare for certain hospitals, and authorizes a "redistribution" to hospitals of the estimated number of FTE resident slots resulting from the reductions. Section 5503 of the Affordable Care Act also amended section 1886(d)(5)(B)(v) of the Act to require application of the provisions of 1886(h)(8) of the Act "in the same manner" to the FTE resident caps for IME. Section 1886(h)(8) of the Act requires that any such reduction to the FTE resident caps will be equal to 65 percent of the difference between the hospital's "otherwise applicable resident limit" and its "reference resident level." Section 5503 of the Affordable Care Act as initially enacted did not include language specific to Medicare GME affiliated groups and did not provide for FTE resident cap reduction determinations based on the aggregate experience of a Medicare GME affiliated group. Accordingly, section 203 of the MMEA further amended section 1886(h)(8) of the Act to specify that the provisions of section 1886(h)(8) of the Act shall be applied to hospitals which are members of the same Medicare GME affiliated group, and the "reference resident level" for each such hospital is the FTE resident count from the cost reporting period that results in the smallest difference between the FTE resident count and the FTE resident cap. We are revising § 413.79(m)(7) to reflect the changes made by section 203 of the MMEA.

III. 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.

IV. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay of Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), we are required to publish a notice of proposed rulemaking (NPRM) in the **Federal Register**. Section 1871(b)(1) of the Act imposes a similar requirement: that the Secretary publish a **Federal Register** notice with not less than 60 days for public comment. In addition, both authorities mandate a 30-day delay in effective date.

Section 553(b)(B) of the APA provides for an exception from these APA requirements; in cases in which this exception applies, section 1871(b)(2)(C) of the Act provides an exception from the notice and delayed effective date requirements of the Act as well. Section 553(b)(B) of the APA authorizes an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in

effective date where such delay is contrary to the public interest and an agency includes a statement of support.

Here, section 203 of the MMEA amends section 1886(h)(8) of the Act. Regulations implementing section 5503(a) of the ACA were published in the November 24, 2010 **Federal Register**. The amendment made by section 203 of the MMEA is effective as if included in the enactment of section 5503(a) of the Affordable Care Act. Specifically the amendments apply to portions of cost reporting periods occurring on or after July 1, 2011. As a result, given the December 15, 2010 enactment of the MMEA, there was and there is a finite and, under the circumstances, highly compressed window of opportunity to complete implementation before the statutory deadline. Time pressure is acute because the agency must commence implementation substantially in advance of its July 1, 2011 deadline or risk a cascade of missed deadlines and failed intermediate steps, jeopardizing the program. Binding instructions must be given to Medicare contractors and hospitals as soon as possible to enable them to undertake critical first steps in a tight chain of business decisions that must precede implementation of the new provision.

As we indicate in section VI.C., the effect of section 203 of the MMEA is that it benefits member hospitals of Medicare GME affiliated groups by protecting them from or mitigating their loss of residency slots. Prior implementation of section 422 of the MMA, which similarly redistributed unused FTE resident cap slots to other qualifying hospitals, suggests that significant time is required to implement this type of provision. The MMA was passed in December 2003, and was effective on July 1, 2005. Unlike section 5503 of the ACA, section 422 of the MMA, as originally enacted, already included language giving special consideration to the treatment of members of Medicare GME affiliated groups. We published final regulations implementing the process for reducing the FTE resident caps of certain teaching hospitals, both members of Medicare GME affiliated groups and those that were not affiliated, by August 1, 2004 (69 FR 49111). Since section 422 of the MMA was effective on July 1, 2005, the agency had 11 months between August 2004 and July 1, 2005 to implement section 422 of the MMA.

In this case, the statutory deadline provides the agency with significantly less time to implement section 5503 of the ACA and section 203 of the MMEA than it had to implement section 422 of the MMA. The ACA was passed on March 23, 2010, and we included the proposal for section 5503 of the ACA in the CY 2011 OPPS proposed rule; the final rule was not issued until November 1, 2010 (75 FR 72133). Since section 5503 of the ACA must be implemented to be effective on July 1, 2011, this means that we have only 8 months (as compared to the 11 months under section 422 of the MMA) to implement section 5503. Moreover, because the language regarding special treatment of hospitals that are members of Medicare GME affiliated groups was not passed as part of the MMEA until December 15, 2010, yet it has the same effective date of July 1, 2011 as section 5503 of ACA, the amount of time available to implement the provision by July 1, 2011 has been further reduced to approximately 4 months. Facing this comparatively brief window, and based on historical experience, we find that it would be impracticable for us and our contractors to perform enough GME audits to assure the validity of as-submitted cost report data that are necessary for implementation—especially while simultaneously reviewing for regulatory compliance many hundreds of applications requesting additional slots.

The implementation of section 5503 of ACA and section 203 of the MMEA, as we learned when implementing section 422 of the MMA, requires significant planning, coordination, and investment of time and audit resources. There are approximately 1,100 teaching hospitals and more than 300 of them are members of Medicare GME affiliated groups. Many of these teaching hospitals have hundreds of residents, and it can take a Medicare contractor many weeks or months to audit the data on each as-submitted cost report. On January 7, 2011, we issued instructions to the contractors instructing them to begin audits for the purpose of implementing section 5503 of ACA. In those instructions, and in the CY 2011 OPPS final rule (75 FR 72153), we stated that the contractors are required to submit their estimates of each teaching hospital's FTE resident cap reduction, if any, to CMS by May 16, 2011. This would allow us to create the "pool" of slots available for redistribution, and to start assigning those slots to qualifying hospitals based on applications we reviewed between January 21, 2011 and May 2011. Even prior to May 16, 2011, the Medicare contractors will need time to notify hospitals of their tentative findings and allow hospitals to react to the potential FTE resident cap reductions. Unfortunately, many audits have yet to begin, as the Medicare contractors have been waiting for instructions regarding treatment of hospitals that are members of Medicare GME affiliated groups.

For these reasons, that is, because we face an extremely compressed timeframe; because Medicare contractors and hospitals need to make critical business decisions and systems changes far in advance, each constituting a material change of position that would be costly and impracticable to reverse; because historical evidences suggests that even a slight delay could prevent timely implementation of this Congressionally mandated policy change; and because it is therefore probable that failing to act early would have adverse financial impacts for teaching hospitals and the Federal government—we have concluded that there is good cause to waive ordinary rulemaking provisions as they are impracticable and contrary to the public interest in this case, and issue interim final regulations as soon as possible, that being necessary to implementing section 203 of the MMEA in an accurate, comprehensive, and timely manner. We are providing a 30-day public comment period.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995. (44 U.S.C. Chapter 35)

VI. Regulatory Impact Statement

A. Statement of Need

Section 5503 of the Affordable Care Act provides for reductions in the statutory FTE resident caps under Medicare for certain hospitals and authorizes a "redistribution" of the FTE resident slots resulting from the reduction in the FTE resident caps to other hospitals. The purpose of section 5503 is to allow hospitals in certain states that wish to start new or expand existing programs in primary care or general surgery but are already training residents at or above their FTE resident caps to use slots from other hospitals that have not been using all of their slots. Section 203 of the Medicare and Medicaid Extenders Act of 2010 amended section 1886(h)(8) of the Act (as added by section 5503 of the Affordable Care Act) to specify that the provisions of section 1886(h)(8)(A) of the Act shall be applied to hospitals

which are members of the same Medicare GME affiliated group, and the "reference resident level" for each hospital is the FTE resident count from the cost reporting period that has the smallest difference between the FTE resident count and the FTE resident cap. The purpose of section 203 is to take into account the unique situation of hospitals that are members of the same Medicare GME affiliated group in that they share FTE resident cap slots, and that FTE resident cap reduction determinations of hospitals should consider the shared nature of those slots.

B. Overall Impact

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

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

In the November 24, 2010 final rule which implemented section 5503 of the Affordable Care Act (75 FR 72239), we mentioned that we were unable to project how many FTE resident slots will be available for redistribution under section 5503 of the Affordable Care Act. Unlike section 422 of the MMA, which also provided for a redistribution of FTE resident slots but provided that the redistributed slots will be paid using the national average per resident amount (PRA) for direct GME payment purposes, section 5503 of the Affordable Care Act requires that hospitals be paid for their additional FTE resident slots using the hospitals' specific PRAs. Because we were unable to determine the number of FTE resident slots that will be redistributed under section 5503 of the Affordable Care Act or which hospitals will be receiving additional FTE resident slots, we could not calculate a direct GME impact for section 5503 of the Affordable Care Act. Similarly, we cannot calculate a direct GME dollar impact for section 203 of the MMEA.

Although the general effect of section 203 of the MMEA is to protect from loss or mitigate the loss of slots of hospitals that are members of a Medicare GME affiliated group, there could be fewer direct GME and IME slots available for redistribution to other hospitals. For several reasons, we are unable to compute a dollar impact on the redistribution of those slots to other hospitals. First, although there are currently 307 hospitals that are members of a Medicare GME affiliated group, these hospitals were not necessarily members of Medicare GME affiliated groups during the reference cost reporting periods specified by section 5503 of the Affordable Care Act. Second, we do not know which hospitals, that are members of a Medicare GME affiliated group, will be at risk for losing direct GME and/or IME FTE resident cap slots under section 5503 of the Affordable Care Act, as revised by section 203 of the MMEA. Third, we do not know the PRAs and Medicare utilization rates of hospitals that will be receiving additional FTE resident slots. With respect to determining an impact for IME payment purposes, section 5503 of the Affordable Care Act requires us to use an IME multiplier of 1.35; however, we do not know the intern-to-bed ratio and resident-to-bed ratio for the hospitals that will receive additional FTE resident slots or the volume or case mix of Medicare discharges at those hospitals. Therefore, we cannot determine a financial impact for purposes of direct GME and IME for this provision. We solicit comment on our analysis.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most physician practices, hospitals and other providers are small entities, either by nonprofit status or by qualifying as small businesses under the Small Business Administration's size standards (revenues of less than $7.0 to $34.5 million in any 1 year). States and individuals are not included in the definition of a small entity. For details, see the Small Business Administration's Web site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=2465b064ba6965cc1fbd2eae60854b11&rgn=div8&view=text&node=13:1.0.1.1.16.1.266.9&idno=13)*

Individuals and States are not included in the definition of a small entity. The Regulatory Flexibility Act requires an agency to prepare an initial regulatory flexibility analysis when they issue a general notice of proposed rule-making. However, HHS has maintained a long-standing policy of voluntarily preparing initial regulatory flexibility analyses for all rule-making. The Secretary has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this interim final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

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. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

C. Anticipated Effects

We believe the general effect of section 203 of the MMEA is that it could protect from loss or mitigate the loss of slots for hospitals that are members of a Medicare GME affiliated group, and therefore, there could be fewer direct

GME and IME slots available for redistribution to other hospitals.

D. Alternatives Considered

Although there may be alternatives, the method we are finalizing in this interim final rule is the most consistent with that of a similar provision for hospitals that are members of Medicare GME affiliated groups implemented as part of section 422 of the MMA.

E. Conclusion

The analysis above, together with the remainder of this preamble, provides a Regulatory Flexibility Analysis as well as a Regulatory Impact Analysis. For the reasons outlined in the RIA, we are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined that this interim final rule with comment would not have a direct significant economic impact on a substantial number of small entities or a direct significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); and sec. 124 of Pub. L. 106–133 (113 Stat. 1501A–332).

■ 2. Section 413.79 is amended by revising paragraph (m)(7) to read as follows:

§ 413.79 Direct GME payments: Determination of the weighted number of FTE residents.

(m) * * *

(7) *Consideration for members of Medicare GME affiliated groups.* For a hospital that is a member of a Medicare GME affiliated group at any point during any of the hospital's three most recent cost reporting periods ending before March 23, 2010 for which a cost report has been settled or has been submitted to Medicare contractor by March 23, 2010, in determining whether a hospital's otherwise applicable resident FTE resident cap is reduced under paragraph (m) of this section, the Medicare contractor determines a hospital's reference cost reporting period by finding the cost reporting period that results in the smallest difference between the reference resident level and the otherwise applicable resident limit.

(i) If the reference resident level is less than the otherwise applicable resident limit in that reference cost reporting period, the Medicare contractor must then determine if the hospital was a member of a Medicare GME affiliated group as of the July 1 that occurs during that reference cost reporting period.

(ii) If the hospital was a member of a Medicare GME affiliated group as of the July 1 that occurs during that reference cost report, the Medicare contractor does all of the following:

(A) Treat the members of the Medicare GME affiliated group as a group for that reference cost reporting period, for the purpose of determining a reduction to the particular hospital's FTE resident cap.

(B) Determine for each hospital in the Medicare GME affiliated group respectively the FTE resident cap and FTE resident count (IME and direct GME separately).

(C) Add each hospital's FTE resident caps (IME and direct GME separately) to determine the aggregate FTE resident cap.

(D) Add each hospital's FTE resident count (IME and direct GME separately) to determine the aggregate FTE resident count.

(iii) If the aggregate FTE resident count is equal to or exceeds the aggregate FTE resident cap, then the Medicare contractor would make no reduction to the particular hospital's otherwise applicable FTE resident cap under paragraph (m) of this section, and no further steps are necessary for that hospital.

(iv) If the hospitals' aggregate FTE resident count is less than the aggregate FTE resident cap, then the Medicare contractor would determine on a hospital-specific basis whether the particular hospital's FTE resident count is less than its otherwise applicable FTE resident cap (as adjusted by affiliation agreement(s)) in the hospital's reference cost report.

(v) If the hospital's FTE resident count exceeds its otherwise applicable FTE resident cap, the hospital will not have its otherwise applicable FTE resident cap reduced under paragraph (m) of this section.

(vi) If the particular hospital's FTE resident count is less than its otherwise applicable FTE resident cap, the Medicare contractor determines a pro rata cap reduction amount that is equal, in total, to 65 percent of the difference between the aggregate FTE resident cap and the aggregate FTE resident count for the Medicare GME affiliated group.

(A) The pro rata cap reduction to the particular hospital's otherwise applicable FTE resident cap is calculated by dividing the difference between the hospital's otherwise applicable FTE resident cap and the hospital's FTE resident count, by the total amount by which all of the hospitals' individual FTE resident counts are below their affiliated FTE resident caps, multiplying the quotient by the difference between the aggregate FTE resident cap and the aggregate FTE resident counts for the Medicare GME affiliated group, and multiplying that result by 65 percent.

(B) The final reduction takes into account the hospital's FTE resident cap as reduced under the provisions of paragraph (c)(3) of this section.

* * * * *

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

Dated: February 10, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: March 1, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–5960 Filed 3–11–11; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 11–324; MB Docket No. 10–189; RM–11611]

Radio Broadcasting Services; Willow Creek, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Miriam Media, Inc., allots FM Channel 258A at Willow Creek, California. Channel 258A can be allotted at Willow Creek, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 40–57–29 NL and 123–42–23 WL, with a site restriction of 6.7 km (4.2 miles) west of the community *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Effective April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 10–189, adopted February 16, 2011, and released February 18, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 258A at Willow Creek.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2011–5089 Filed 3–11–11; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 76, No. 49
Monday, March 14, 2011

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

DEPARTMENT OF HOMELAND SECURITY

6 CFR Chapter I

8 CFR Chapter I

19 CFR Chapter I

33 CFR Chapter I

44 CFR Chapter I

46 CFR Chapters I and III

49 CFR Chapter XII

[Docket No. DHS–2011–0015]

Reducing Regulatory Burden; Retrospective Review Under Executive Order 13563

AGENCY: Office of the General Counsel, DHS.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to Executive Order 13563, "Improving Regulation and Regulatory Review," issued by the President on January 18, 2011, the Department of Homeland Security (Department or DHS) must develop a preliminary plan to facilitate the review of existing DHS significant regulations through the use of retrospective analyses. The preliminary plan will include criteria for identifying existing DHS significant rules that might be modified, streamlined, expanded, or repealed, so as to make DHS's regulatory program more effective or less burdensome in achieving its regulatory objectives. The Department is soliciting views from the public on how best to develop its preliminary plan. The Department is also seeking views from the public on specific existing significant DHS rules that the Department should consider as candidates for modification, streamlining, expansion, or repeal. These efforts will help DHS ensure that its regulations contain necessary, properly tailored, and up-to-date requirements that effectively achieve regulatory objectives without imposing unwarranted costs.

DATES: Written comments and information are requested on or before April 13, 2011. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0015, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Regulatory.Review@dhs.gov.* Include "DHS Retrospective Review" in the subject line of the message.
- *IdeaScale:* IdeaScale is a Web-based platform that allows users to actively share information and expertise in a collaborative manner. IdeaScale allows commenters to submit ideas, discuss and refine others' ideas, and vote on each others' ideas. To submit comments or engage in dialogue via IdeaScale, go to the feedback community link at *http://DHSretrospectivereview.ideascale.com.* In order to participate, you will have to obtain a log-in. You have two options: (1) You may register and obtain a log-in on IdeaScale using a verifiable e-mail address, or (2) You can use the *OpenID* feature, which allows you to log-in on IdeaScale and participate using an existing social media account such as Facebook or Twitter. For further information, see the section titled "DHS's Implementation of Executive Order 13563."
- *Mail:* U.S. Department of Homeland Security, Office of the General Counsel, 245 Murray Lane, Mail Stop 0485, Washington, DC 20528–0485 ATTN: DHS Retrospective Review.

FOR FURTHER INFORMATION CONTACT: Christina E. McDonald, Acting Associate General Counsel for Regulatory Affairs, U.S. Department of Homeland Security, Office of the General Counsel. E-mail: *Regulatory.Review@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments using any of the methods identified in the **ADDRESSES** section.

Instructions: All submissions must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov.*

Comments that include trade secrets information, confidential commercial or financial information, Sensitive Security Information (SSI), Protected Critical Infrastructure Information (PCII) or Chemical-terrorism Vulnerability Information (CVI) should not be submitted to the public docket. Please submit such comments separately from other comments on this notice. Comments containing trade secrets, confidential commercial or financial information, SSI, PCII, or CVI should be appropriately marked as containing such information and submitted by mail to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

B. Executive Order 13563

On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review" (76 FR 3821) to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals and that agencies give careful consideration to the benefits and costs of those regulations. The Executive Order reaffirms and builds upon governing principles of contemporary regulatory review, including Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). To that end, Executive Order 13563 requires, among other things, that:

- Agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; and that agencies tailor regulations to impose the least burden on society, consistent with achieving the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and that agencies select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety,

and other advantages; distributive impacts; and equity).

- The regulatory process encourages public participation and an open exchange of views, with an opportunity for the public to comment.
- Agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
- Agencies consider low-cost approaches that reduce burdens and maintain flexibility.
- Regulations be guided by objective scientific evidence.

Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. Specifically, each agency must develop a preliminary plan "under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

C. DHS's Regulatory Responsibility

DHS's mission is to ensure a homeland that is safe, secure, and resilient against terrorism and other hazards. The Department carries out its mission through the Office of the Secretary and 28 components, including the following seven operational components: U.S. Citizenship and Immigration Services, U.S. Coast Guard, U.S. Customs and Border Protection, Federal Emergency Management Agency, U.S. Immigration and Customs Enforcement, U.S. Secret Service, and Transportation Security Administration.

Our mission gives us five main areas of responsibility: (1) Prevent terrorism and enhance security; (2) secure and manage our borders; (3) enforce and administer our immigration laws; (4) safeguard and secure cyberspace; and (5) ensure resilience to disasters. To further these areas, DHS has responsibility for a broad range of regulations. For example, to secure and manage our borders, DHS regulates people and goods entering and exiting the United States. DHS, to combat terrorism, regulates aviation security, high-risk chemical facilities, and infrastructure protection. DHS also issues regulations to administer immigration and citizenship benefits as well as regulations covering maritime safety and environmental protection. Finally, DHS promulgates a wide range of regulations concerning disaster preparedness, response, and recovery.

D. DHS's Implementation of Executive Order 13563

As a first step in launching its retrospective review under Executive Order 13563, DHS is issuing this notice seeking public comment. To facilitate public dialogue and cross-communication on these matters, in addition to the standard regulatory channels, DHS is also seeking comment through IdeaScale. IdeaScale is a Web-based platform that allows users to actively share information and expertise in a collaborative manner. IdeaScale allows commenters to submit ideas, discuss and refine others' ideas, and vote on each others' ideas. For instructions on how to use IdeaScale, *see* the **ADDRESSES** section above. DHS encourages public commenters to engage in dialogue through IdeaScale.

As a participant of IdeaScale, commenters can engage in dialogue in seven ways: (1) View, search, and explore all content on the site (no log-in required); (2) Submit an original idea to a particular category (log-in required); (3) Submit a comment about an idea (log-in required); (4) Vote on an idea (log-in required); (5) Flag inappropriate ideas and comments, as being either SPAM/Inappropriate or Duplicate (log-in required); (6) Share ideas through a Twitter feed or on your Facebook page (log-in required for IdeaScale, as well as an active Facebook and/or Twitter account); (7) Tag an idea (participants can assign key words or terms to ideas to help describe/categorize the idea, thus allowing the idea to be found again by Web 2.0 browsing or searching).

II. Request for Comment

Pursuant to the Executive Order, DHS is developing a preliminary plan for the periodic review of its existing significant regulations. DHS's goal is to create a systematic method for identifying those significant rules that are obsolete, unnecessary, unjustified, or simply no longer make sense. Although this review will focus on the elimination of significant rules that are no longer warranted, DHS will also consider strengthening, complementing, or modernizing rules where necessary or appropriate—including, as relevant, undertaking new rulemakings. The Department stresses that this review is for existing significant rules; the public should not use this process to submit comments on proposed rules.

Despite best efforts at the time a rule is promulgated, it is generally difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Because knowledge about the full effects of a rule tends to be widely dispersed in society, members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens. Interested parties may also be well-positioned to identify those rules that are most in need of review and, thus, assist the Department in prioritizing and properly tailoring its retrospective review process. In short, engaging the public in an open, transparent process is a crucial first step in DHS's review of its existing significant regulations.

III. List of Questions for Commenters

Below is a list of preliminary questions, the answers to which will assist in informing the Department's efforts to develop a preliminary plan for the retrospective analysis of its existing regulations and to identify those regulations that may benefit from a retrospective analysis. In addressing these questions, commenters should identify, with specificity, the regulation at issue, providing the Code of Federal Regulation (CFR) cite where available. DHS also requests that the commenter provide, in as much detail as possible, an explanation why a regulation should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways the Department can better achieve its regulatory objectives. DHS encourages interested parties to provide specific data that document the costs, burdens, and benefits of existing requirements. Comments that rehash debates over recently issued rules will be less useful.

Commenters might also address how DHS can best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations and whether there are existing sources of data that DHS can use to evaluate the post-promulgation effects of its regulations over time. Particularly where comments relate to a rule's costs or benefits, comments will be most useful if there are data and experience under the rule available to ascertain the rule's actual impact. For that reason, we encourage the public to emphasize those rules that have been in effect for a sufficient amount of time to warrant a fair evaluation.

The below nonexhaustive list is meant to assist in the formulation of comments and is not intended to restrict the issues that commenters may address:

(1) How can the Department best promote meaningful periodic reviews of its existing significant regulations, and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?

(2) What factors should the agency consider in selecting and prioritizing rules for review?

(3) Are there regulations that simply make no sense or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?

(4) Are there rules that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

(5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

(7) Are there regulations that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

(8) Are there rules that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory requirements?

(9) Are there any of the Department's regulations that are not tailored to impose the least burden on society, consistent with achieving the regulatory objectives?

(10) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time?

(11) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DHS regulatory programs?

(12) Are there any regulations that create difficulty because of duplication, overlap, or inconsistency of requirements?

The Department notes that this notice is issued solely for information and program-planning purposes. Responses to this notice do not bind DHS to any further actions related to the response.

Ivan K. Fong,

General Counsel.

[FR Doc. 2011–5829 Filed 3–11–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS–FV–10–0087; FV10–930–5; AO–370–A9; 11–0093]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Hearing on Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Agreement and Order No. 930 (order), which regulate the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Three amendments are proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. The proposed amendments would change how grower diversion of cherries is accounted for under the order and would affect volume control in years when grower diversions are utilized. In addition, the Agricultural Marketing Service (AMS) proposes to make any such changes as may be necessary to the order or administrative rules and regulations to conform to any amendment that may result from the hearing. These proposed amendments are intended to improve the operation and administration of the order.

DATES: The hearing dates are:

1. April 20, 2011, 9 a.m. to 5 p.m.; and continuing on April 21, 2011, at 9 a.m., if necessary, in Grand Rapids, Michigan.

2. April 26, 2011, 9 a.m. to 5 p.m.; and continuing on April 27, 2011, at 9 a.m., if necessary, in Provo, Utah.

ADDRESSES: The hearing locations are:

1. Grand Rapids—U.S. Bankruptcy Court, One Division Ave., N, 3rd Floor Courtroom A, Grand Rapids, MI 49503.

2. Provo—Utah County Administration Building, 100 E. Center Street, Room L900, Provo, Utah 84606.

FOR FURTHER INFORMATION CONTACT: Parisa Salehi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave., SW., Stop 0237, Washington, DC 20250, telephone: (202) 720–9918, Fax: (202) 720–8938; or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Parisa.Salehi@usda.gov* or *Kathy.Finn@usda.gov.*

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–6862, Fax: (202) 720–8938, or e-mail: *Antoinette.Carter@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the

petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules and supplemental rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments were recommended by the Board and initially submitted to USDA on September, 2010. Additional information was submitted in November 2010 at the request of USDA and a determination was subsequently made to schedule this matter for hearing.

The proposed amendments to the order recommended by the Board are summarized as follows:

1. Amend the definition of "handle" in § 930.10 of the order so handler acquisition of grower diversion certificates is not considered handling.

2. Amend the "marketing policy" provisions in § 930.50 of the order so grower-diverted cherries are not counted as production in the volume control formula.

3. Amend § 930.58 of the order so grower-diverted cherries are not treated as actual harvested cherries.

The Board works with USDA in administering the order. These proposals submitted by the Board have not received the approval of USDA. The proposed amendments are intended to improve the operation and administration of the order.

In addition to the proposed amendments to the order, AMS proposes to make any such changes as may be necessary to the order or administrative rules and regulations to conform to any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing. Four copies of prepared testimony for presentation at the hearing should also be made available. To the extent practicable, eight additional copies of evidentiary exhibits and testimony prepared as an exhibit should be made available to USDA representatives on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employee of the General Counsel assigned to represent the Board in this proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposal submitted by the Cherry Industry Administrative Board:

Proposal Number 1

3. Revise the introductory paragraph in § 930.10 to read as follows:

§ 930.10 Handle.

Handle means the process to brine, can, concentrate, freeze, dehydrate, pit, press or puree cherries, or in any other way convert cherries commercially into a processed product, or divert cherries pursuant to § 930.59, or to otherwise place cherries into the current of commerce within the production area or from the area to points outside thereof: *Provided,* That the term handle shall not include:

* * * * *

4. Revise paragraphs (d) and (e) of § 930.50 to read as follows:

§ 930.50 Marketing policy.

* * * * *

(d) *Final percentages.* No later than September 15 of each crop year, the Board shall review the most current information available including, but not limited to, processed production and grower diversions of cherries during the current crop year. The Board shall make such adjustments as are necessary between free and restricted tonnage to achieve the optimum supply and recommend such final free market tonnage and restricted percentages to the Secretary and announce them in accordance with paragraph (h) of this section. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent shall be the final restricted percentage. With its recommendation, the Board shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Board shall give consideration to the following factors:

(1) The estimated total production of cherries;

(2) The estimated size of the crop to be handled;

(3) The expected general quality of such cherry production;

(4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(5) The expected demand conditions for cherries in different market segments;

(6) Supplies of competing commodities;

(7) An analysis of economic factors having a bearing on the marketing of cherries;

(8) The estimated tonnage held by handlers in primary or secondary inventory reserves;

(9) Any estimated release of primary or secondary inventory reserve cherries during the crop year; and

(10) The quantity of grower-diverted cherries during the crop year.

* * * * *

5. Revise paragraph (a) of § 930.58 to read as follows:

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage

cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

* * * * *

Proposal submitted by USDA:

Proposal Number 2

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: March 4, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–5717 Filed 3–11–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Doc No. AMS–FV–10–0092]

Mango Promotion, Research, and Information Order; Reapportionment

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the number of members on the National Mango Board (Board) from 20 to 18 to reflect the elimination of two non-voting wholesaler/retailer positions. In accordance with the Mango Promotion, Research, and Information Order (Order), which is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act), a review of the composition of the Board must be conducted every five years. The Board has reviewed the production volumes and geographical distribution of domestic and imported mangos, and submitted this information to the U.S. Department of Agriculture with a recommendation that no changes be made to the number of importer, first handler, or producer seats on the Board. However, the Board recommends elimination of two non-voting wholesaler/retailer positions that have not been filled since 2007.

DATES: Comments must be received by April 13, 2011.

ADDRESSES: Comments may be submitted electronically at *http://www.regulations.gov.* Comments may also be sent to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Room 0632–S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250–0244; *fax:* 202–205–2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the above office during regular business hours, or may be viewed at *http://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Veronica Douglass, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, Room 0632–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; *telephone:* 888–720–9917; *fax:* 202–205–2800; or *e-mail: veronica.douglass@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Mango Promotion, Research, and Consumer Information Order (Order) [7 CFR part 1206]. The Order is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411–7425].

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under the Act, a person subject to an order may file a petition with the U.S. Department of Agriculture (Department) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling.

Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this rule on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action, so that small businesses will not be disproportionately burdened.

The Small Business Administration defines small agricultural producers as those having annual receipts of no more than $750,000, and small agricultural service firms as those having annual receipts of no more than $7 million (13 CFR part 121). First handlers, importers, wholesalers, and retailers would be considered agricultural service firms. Currently, fewer than five first handlers and 193 importers are subject to assessment under the Order. The majority of producers would be considered small businesses. The majority of these first handlers and importers would be considered small businesses, while wholesalers and retailers would not.

First handlers and importers who market or import less than 500,000 pounds of mangos annually are exempt from the assessment. Mangos that are exported out of the United States are also exempt from assessment. In addition, domestic producers, foreign producers, wholesalers, and retailers are not subject to assessment under the Order, but such individuals are eligible to serve on the Board along with importers and first handlers.

Section 1206.30 (c) of the Order requires that the Board review the volume and geographical distribution of mango production and imports at least once every five years. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes

in the volume and geographical distribution of mango production and imports.

The Order currently provides for a Board of 20 members including eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers. At its November 16, 2010 meeting, the Board reviewed the volume and geographic distribution of mango production and imports from 2006 through 2009. Based on U.S. Customs data, the volume of mango imports to the U.S. declined from 666,772,761 pounds in 2006 to 627,271,605 pounds in 2009. The Board's eight importer seats are allocated based on the volume of mangos imported into each of the four Districts defined in the Order. The current allocation is two seats for District I, three seats for District II, two seats for District III, and one seat for District IV. The percentage of the total mango import volume imported into District I remained at 25 percent from 2006 to 2009. Imports into District II grew from 35 percent of the total in 2006 to 41 percent in 2009. Imports into District III fell from 28 percent of the total in 2006 to 23 percent in 2009. Imports into District IV fell from 12 percent of the total in 2006 to 11 percent in 2009. Much of the domestic mango production was adversely affected by Hurricanes during the early 2000s. Accordingly, data provided by the Board shows that in 2006, no assessments were collected on domestic mangos, while in 2009 assessments were collected on 1,539,306 pounds of domestic mangos. After reviewing the data regarding mango imports and domestic production, the Board voted to recommend that no changes be made at this time to the number of importer, first handler, domestic producer, or foreign producer seats; or to the allocation of importer seats among the four districts.

At the same meeting, the board voted to request elimination of the wholesaler/retailer positions from the Order. These positions were included so that the board would include members with direct customer sales experience. The Board has made numerous attempts to nominate individuals to those positions; however, wholesalers and retailers are not interested in or do not have the time to serve on the Board. As a result, the two wholesaler/retailer positions have been vacant since 2008. These two positions do not represent assessment payers. If the wholesaler/retailer positions are eliminated, the Board would consist of a total of 18 members including eight importers, one first handler, two domestic producers, and seven foreign producers.

Nominations and appointments to the Board are conducted pursuant to sections 1206.31 and 1206.33 of the Order. Appointments to the Board are made by the Secretary from a slate of nominated candidates. Pursuant to section 1206.31 of the Order, candidates for the importer, first handler, and domestic producer positions are nominated by their peers. Nominations for the foreign producer positions are solicited from foreign mango producer organizations. The Board nominates the wholesaler/retailer members. The Order requires that two nominees be submitted for each vacant position.

In accordance with OMB regulation [5 CFR part 1320], which implements information collection requirements imposed by the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], there are no new requirements contained in this rule. In fact a decrease of .33 hours in the information collection burden for the mango program is expected. The information collection requirements have been previously approved by OMB under OMB control number 0581–0093.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Background

The Order, which became effective November 3, 2004, is authorized under the Act and administered by the Board. The Order provides for a 20-member Board consisting of eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers.

Under the Order, the Board administers a nationally coordinated program of promotion, research, and information designed to strengthen the position of mangos in the marketplace and to develop, maintain, and expand the demand for mangos in the United States. The program is financed by an assessment of ½ cent per pound on first handlers and importers who market or import 500,000 pounds or more of mangos annually. Under the Order, first handlers remit assessments directly to the Board, and assessments paid by importers are collected and remitted by the United States Customs Service.

Pursuant to section 1206.30(c) of the Order, at least once in each five-year period, the Board shall review the volume and geographical distribution of mango production and imports and, if warranted, make a recommendation to the Secretary to alter the Board's membership. On November 16, 2010, at its fall meeting, the Board voted to recommend that no changes be made to the importer, first handler, domestic producer, or foreign producer positions, but that the non-voting wholesaler/retailer positions be eliminated. If the wholesaler/retailer positions are eliminated, the Board's membership would be reduced from 20 to 18.

Accordingly, the proposed rule would delete the definition of retailer in section 1206.19 and wholesaler in section 1206.24 and references to wholesalers in sections 1206.31 and 1206.32.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that the proposed amendments, if adopted, may be implemented before the Board's 2012 term of office, which begins on January 1, 2012. All written comments received in response to this rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mango Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1206 is proposed to be amended as follows:

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for 7 CFR part 1206 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

§ 1206.19 [Reserved]

2. Remove and reserve § 1206.19.

§ 1206.24 [Reserved]

3. Remove and reserve § 1206.24.

4. Amend § 1206.30 by revising paragraph (a) to read as follows:

§ 1206.30 Establishment of the National Mango Promotion Board.

(a) *Establishment of the National Mango Promotion Board.* There is hereby established a National Mango Promotion Board composed of eight importers, one first handler, two domestic producers, and seven foreign producers. The chairperson shall reside in the United States and the Board office shall also be located in the United States.

* * * * *

§ 1206.31 [Amended]

5. Amend § 1206.31 by removing paragraph (h), and redesignating paragraph (i) as paragraph (h).

6. Revise § 1206.32 to read as follows:

§ 1206.32 Term of office.

The term of office for first handler, importer, domestic producer, and foreign producer members of the Board will be three years, and these members may serve a maximum of two consecutive three-year terms. When the Board is first established, the first handler, two importers, one domestic producer, and two foreign producers will be assigned initial terms of four years; three importers, one domestic producer, and two foreign producers will be assigned initial terms of three years; and three importers and three foreign producers will be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

Dated: March 4, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–5715 Filed 3–11–11; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Chapter 1

[Docket No.: SBA–2011–0012]

Reducing Regulatory Burden; Retrospective Review Under Executive Order 13563

AGENCY: U.S. Small Business Administration

ACTION: Request for information.

SUMMARY: As part of its implementation of Executive Order 13563, "Improving Regulation and Regulatory Review," the Small Business Administration (SBA) is seeking comments and information from interested parties to assist the agency in reviewing its existing regulations to determine whether they should be streamlined, expanded, or withdrawn. The primary objectives of this review are to make SBA's regulatory program more cost effective and less burdensome on participants in the Agency's programs while continuing to promote economic growth, innovation, and job creation. SBA seeks public input on the design of a plan to use for periodic retrospective review of its regulations and an initial list of the rules to be reviewed under the plan.

DATES: Comments are requested on or before April 13, 2011.

ADDRESSES: You may submit comments, identified by Docket Number SBA–2011–0012 using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Identify comments by "Docket Number SBA–2011–0012, Regulatory Burden RFI," and follow the instructions for submitting comments.

Mail: U.S. Small Business Administration, Office of the General Counsel, 409 Third Street, SW., Washington, DC 20416.

SBA will post comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Martin S. Conrey, Assistant General Counsel for Legislation and Appropriations, Office of General Counsel, 409 Third Street, SW., Washington, DC 20416. Highlight the information that you consider to be CBI, and explain why you believe this information should be held confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Martin S. Conrey, Assistant General Counsel for Legislation and Appropriations, Office of the General Counsel, 409 Third Street, SW., Washington, DC 20416; telephone number: 202–619–0638; fax number: 202–205–6846; e-mail address: *martin.conrey@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

The mission of the Small Business Administration is to maintain and strengthen the Nation's economy by enabling the establishment and viability of small businesses, and by assisting in economic recovery of communities after disasters. In carrying out this mission, SBA has developed a regulatory policy that is implemented primarily through several core program offices: Office of Capital Access, Office of Disaster Assistance, Office of Entrepreneurial Development, Office of Government Contracting and Business Development, Office of International Trade, and Office of Investment and Innovation. SBA's regulations are codified at Title 13 Code of Federal Regulations, Chapter I, and consist of Parts 100 through 147.

II. Executive Order 13563

On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," that requires Federal agencies to seek more affordable, less intrusive means to achieve policy goals, and to give careful consideration to the benefits and costs of their regulations. The Executive Order also requires agencies to review existing rules to remove outdated regulations that stifle job creation and make the U.S. economy less competitive. Agencies are directed to develop a preliminary plan under which they will periodically review existing regulations to determine which should be maintained, modified, strengthened, or withdrawn in order to increase their effectiveness and decrease the burdens of the agency's regulatory program.

III. Retrospective Review Plan

In compliance with the executive order, SBA seeks help in designing the plan it will use for the periodic review of its existing regulations and an initial list of candidate rules for review. The Agency's goal is to create a systematic method for identifying those significant rules that are obsolete, unnecessary, unjustified, or counterproductive. The public is first asked to comment on how SBA should devise its preliminary plan, with a defined method and schedule, for identifying certain significant rules that may be obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. It would be helpful for comments to address how SBA could best evaluate and analyze regulations in order to expand on those that work and to modify, improve, or rescind those that do not. Comments might address how SBA can best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations and whether there are existing sources of data that SBA can use to evaluate the post-promulgation effects of regulations over time. SBA is particularly interested in the public's views about how well its current processes for reviewing regulations function and how those processes might be expanded or otherwise adapted to meet the objectives of Executive Order 13563. SBA is also interested in comments about factors that we should consider in setting priorities and selecting rules for review.

SBA intends for its preliminary plan to include an initial list of candidate rules to review. SBA solicits suggestions for specific rules that should be on the list. In suggesting rules for review,

commenters might usefully address, among other things, how SBA can use the retrospective review process to achieve the following objectives: (1) Promote economic growth, innovation, competitiveness, and job creation; (2) eliminate outdated regulations; (3) lessen the burdens imposed on those directly or indirectly affected by our regulations, particularly small entities; (4) increase the benefits provided to the public by our regulations, and improve the cost-benefit balance of our regulations; (5) eliminate duplicative or overlapping regulations; (6) reduce paperwork by eliminating duplication, lessening frequency, allowing electronic submission, standardizing forms, exempting small entities, or other means; (7) eliminate conflicts and inconsistencies in SBA's regulations; (8) simplify or clarify language in regulations; (9) revise regulations to address changes in technology, economic conditions, or other factors; (10) determine if matters in an existing regulation could be better handled fully by trade organizations or participants without Federal regulations; (11) reduce burdens by incorporating industry consensus standards into regulations; (12) reconsider regulations that were based on scientific or other information that has been discredited or superseded; and (13) expand regulations that are insufficient to address their intended objective or obtain additional benefits.

Comments should focus on regulations that have demonstrated deficiencies. Comments that rehash debates over recently issued rules will be less useful. The public should focus on rule changes that will achieve a broad public impact, rather than an individual, personal or corporate benefit. Where feasible, comments should reference a specific regulation, by Code of Federal Regulations (CFR) citation, and provide SBA information on what needs fixing and why. Comments do not necessarily have to address how to fix the perceived problem, though such comments are welcome. Lastly, we also want to stress that this review is for existing rules; the public should not use this process to submit comments on proposed rules.

With these factors in mind, SBA is contemplating focusing its retrospective review on the rules that govern the following programs: Small Business Investment Companies (Part 107); Surety Bond Guarantee (Part 115); Business Loans (Part 120); Disaster Loans (Part 123); Government Contracting (Part 125); and HUBZone (Part 126).

SBA has just completed a comprehensive review of the regulations for the 8(a) Business Development/Small Disadvantaged Business program (Part 124) pursuant to section 610 of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The final rule reflects an extensive public participation process, including a lengthy notice and comment period, several public hearings in diverse areas of the country, and consultations with various groups. *See,* 76 FR 8221 (Feb. 11, 2011). SBA is currently conducting a similar review of its size regulations (Part 121) and will be soliciting specific comments on those regulations as they are developed and published in the **Federal Register**. In light of these comprehensive reviews, pursuant to the requirements of section 610 of the Regulatory Flexibility Act, SBA does not intend to include these two sets of regulations in the retrospective review under Executive Order 13563.

IV. Request for Information

Consistent with the Agency's commitment to public participation in the rulemaking process, SBA is issuing this Request for Information (RFI) to solicit views from the public on how best to design a plan to conduct its retrospective analysis of existing SBA rules, and identify those rules that should be included in the plan for possible modification, streamlining, expansion or repeal. While SBA promulgates rules in accordance with the law and to the best of its capability, it is difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Therefore, SBA invites interested parties to submit data that documents the costs, burdens, and benefits of existing regulations. The Agency believes that members of the public are likely to have useful information and perspectives on the benefits and burdens of existing regulations, and can assist SBA in identifying and prioritizing those rules that are most in need of review.

SBA is accepting your comments from now through April 1, 2011. Although the Agency will not be able to respond to every individual comment, your input is valued and your ideas merit careful consideration. By late May or early June, you will have the opportunity to review SBA's retrospective review plan on our Open Government webpage, *http://sba.gov/opengovernment,* as well as an initial list of regulations that we plan to review first.

As you comment, SBA requests that you keep these key considerations in mind:

- SBA must uphold its mission to strengthen America's economy by providing tools to help grow businesses, create jobs, and help victims recover from disasters.
- SBA's plan will be tailored to reflect its resources, rulemaking history, and volume.
- A number of laws or executive orders already direct the Agency to regularly review certain regulations. Your input is requested on developing a plan that is integrated with those existing requirements.

V. List of Questions for Commenters

The list of questions below is designed to identify issues that might arise in the development of a preliminary plan for the retrospective analysis of the agency's regulations. This non-exhaustive list is meant to assist in the formulation of public comments and is not intended to restrict the issues that may be addressed. SBA requests that commenters identify the specific regulation at issue and explain, in as much detail as possible, why the regulation should be modified, streamlined, expanded, or withdrawn, as well as specific suggestions of ways SBA can better achieve its regulatory objectives.

(1) How can SBA identify those rules that might be modified, streamlined, expanded, or repealed?

(2) What factors should the agency consider in selecting and prioritizing rules for review?

(3) Are there regulations that have become unnecessary, or ineffective, and, if so, what are they?

(4) Are there rules that can be withdrawn without impairing SBA's regulatory programs and, if so, what are they?

(5) Are there rules that have become outdated and, if so, how can they be modernized to better accomplish their regulatory objectives?

(6) Are there rules that are still necessary, but which have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(7) Are there regulations, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives more efficiently?

(8) Are there any technological developments that can be leveraged to modify, streamline, or repeal any existing regulatory requirements?

(9) Are there any SBA regulations that are not tailored to impose the least burden on the public?

(10) How can SBA best obtain and consider accurate, objective information

and data about the costs, burdens, and benefits of existing regulations?

(11) Are there existing sources of data SBA can use to evaluate the post-promulgation effects of regulations over time?

(12) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other SBA regulatory programs?

SBA notes that this RFI is issued solely for information and planning purposes and that the Agency is not bound to any further actions related to the comments submitted. All submissions will be made publically available on *http://www.regulations.gov.*

All comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (*e.g.* your name, address, etc.) voluntarily submitted by the commenter.

Authority: 15 U.S.C. 5(b)(6).

Dated: March 8, 2011.

Sara D. Lipscomb,

General Counsel.

[FR Doc. 2011–5839 Filed 3–11–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0158; Directorate Identifier 2010–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767–200, –300, –300F, and –400ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Model 767–200, -300, -300F, and -400ER series airplanes. The existing AD currently requires an inspection to determine if certain motor operated valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary. This proposed AD would add airplanes and, for certain airplanes, require additional inspections to determine if certain motor operated valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent an ignition source inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 28, 2011.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–917–6505; fax 425–917–6590; e-mail *douglas.n.bryant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0158; Directorate Identifier 2010–NM–118–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On October 19, 2009, we issued AD 2009–22–13, amendment 39–16066 (74 FR 55755, October 29, 2009), for certain Boeing Model 767–200, –300, –300F, and –400ER series airplanes. That AD requires an inspection to determine if certain motor operated valve (MOV) actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary. That AD resulted from fuel system reviews conducted by the manufacturer. We issued that AD to prevent an ignition source inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2009–22–13, Boeing issued a revision to Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008 (which was referenced as a source of service information in AD 2009–22–13). Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010, corrects the group configuration assignment for certain airplanes, adds airplanes to the effectivity, and adds additional work for certain airplanes that accomplished Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008; or Boeing Service Bulletin 767–28A0090, Revision 1, dated April 1, 2010. The actions described in Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010, are similar to those described in Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008.

The airplanes that were assigned to the wrong group configuration (Group 3 instead of Group 2) and accomplished the requirements of AD 2009–22–13 in accordance with Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008, need to do additional inspections to determine if certain motor operated valve actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary, in accordance with Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010 (the new group configuration has more work packages than the old group configuration).

The airplanes that were assigned to the wrong group configuration (Group 4 instead of Group 1) in Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008; or Boeing Service Bulletin 767–28A0090, Revision 1, dated April 1, 2010; and accomplished actions using either of those service bulletins need to do additional inspections to determine if certain MOV actuators for the fuel tanks are installed, and related investigative and corrective actions if necessary, in accordance with Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010 (the new group configuration has more work packages than the old group configuration).

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2009–22–13 and would retain the requirements of the existing AD. This proposed AD would also require, for certain airplanes, accomplishing the actions specified in the Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010, described previously.

Costs of Compliance

There are about 398 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for presence of MOV actuators (required by AD 2009–22–13).	Between 2 and 4 work-hours × $85 per hour = Between $170 and $340.	none	Between $170 and $340	Between $67,660 and $135,320.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–16066 (74 FR 55755, October 29, 2009) and adding the following new AD:

The Boeing Company: Docket No. FAA–2011–0158; Directorate Identifier 2010–NM–118–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 28, 2011.

Affected ADs

(b) This AD supersedes AD 2009–22–13, Amendment 39–16066.

Applicability

(c) This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent an ignition source inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2009–22–13, With Revised Service Information

Inspection and Related Investigative/Corrective Actions

(g) For Model 767–200, –300, –300F, and –400ER series airplanes, as identified in Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008: Within 60 months after December 3, 2009 (the effective date of AD 2009–22–13), do the actions in paragraphs (g)(1) and (g)(2) of this AD.

(1) Inspect the motor operated valves (MOVs) in the main and center fuel tanks to determine if any MOV having part number (P/N) MA20A1001–1 is installed, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008; or Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review. After the effective date of this AD, only Revision 2 may be used.

(2) Do all applicable related investigative and corrective actions specified in and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008; or Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010; except as provided by paragraph (h) of this AD. After the effective date of this AD, only Revision 2 may be used.

Alternative Part Numbers

(h) Where Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008; or Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010; specifies replacing any actuator having P/N MA20A1001–1 with a new actuator having P/N MA30A1001, a serviceable actuator having any of the following part numbers is also acceptable as a replacement part: MA30A1001; MA20A2027 (S343T003–56); MA11A1265–1 (S343T003–41); or AV–31–1 (S343T003–111).

New Requirements of This AD

Inspection and Related Investigative/Corrective Actions for Additional Airplanes

(i) For airplanes that are identified in Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010, but are not identified in paragraph (g) of this AD: Within 60 months after December 3, 2009, do the actions required by paragraph (g) of this AD in accordance with Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010.

Revised Inspection and Related Investigative/Corrective Actions Instructions for Certain Airplanes

(j) For airplanes having variable numbers (VNs) VN921, VN922, and VN966 through VN972 inclusive, that accomplished the actions required in paragraph (g) of this AD before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008: Within 60 months after December 3, 2009, do the actions specified in paragraphs (j)(1) and (j)(2) of this AD.

(1) Inspect the motor operated valves (MOVs) in the main and center fuel tanks to determine if any MOV having part number (P/N) MA20A1001–1 is installed, in accordance with Work Packages 2, 3, 4, and 5 of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review.

(2) Do all applicable related investigative and corrective actions specified in and in accordance with Work Packages 2, 3, 4, and 5 of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010; except as provided by paragraph (h) of this AD.

(k) For airplanes having VNs VF181 through VF184 inclusive that accomplished the actions required in paragraph (g) of this AD before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–28A0090, dated July 3, 2008; or Boeing Service Bulletin 767–28A0090, Revision 1, dated April 1, 2010: Within 60 months after December 3, 2009, do the actions in paragraphs (k)(1) and (k)(2) of this AD.

(1) Inspect the motor operated valves (MOVs) in the main and center fuel tanks to determine if any MOV having part number (P/N) MA20A1001–1 is installed, in accordance with Work Packages 2, 3, 4, and 5 of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review.

(2) Do all applicable related investigative and corrective actions specified in and in accordance with Work Packages 2, 3, 4, and 5 of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0090, Revision 2, dated September 2, 2010; except as provided by paragraph (h) of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(l) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 767–28A0090, Revision 1, dated April 1, 2010, are acceptable for compliance with the requirements of paragraphs (i) and (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved previously for AD 2009–22–13 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(n) For more information about this AD, contact Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6505; fax 425–917–6590; e-mail: *douglas.n.bryant@faa.gov.*

(o) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 4, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–5721 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0159; Directorate Identifier 2010–NM–246–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An inspection by the vendor revealed that a number of Rubber Bull Gears (RBG) in the

Horizontal Stabilizer Trim Actuator (HSTA) of the CL–600–2C10, CL–600–2D15 and CL–600–2D24 aeroplanes were installed with a wheel material hardness out of specification. This non-conformity has a direct impact on the HSTA life limit. The teeth of these non-conformant RBGs could break and in extreme cases, could lead to uncontrolled HSTA movement without the ability to re-trim the aeroplane. If not corrected, this condition could result in a difficulty to control the pitch and subsequent loss of the aeroplane.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 28, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0159; Directorate Identifier 2010–NM–246–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–34, dated October 5, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> An inspection by the vendor revealed that a number of Rubber Bull Gears (RBG) in the Horizontal Stabilizer Trim Actuator (HSTA) of the CL–600–2C10, CL–600–2D15 and CL–600–2D24 aeroplanes were installed with a wheel material hardness out of specification. This non-conformity has a direct impact on the HSTA life limit. The teeth of these non-conformant RBGs could break and in extreme cases, could lead to uncontrolled HSTA movement without the ability to re-trim the aeroplane. If not corrected, this condition could result in a difficulty to control the pitch and subsequent loss of the aeroplane.
>
> This [Canadian airworthiness] directive mandates replacement of the RBGs which have material hardness out of specification [with a modified HSTA].

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 670BA–27–058, dated August 31, 2010; and SAGEM has issued SAGEM Service Bulletin 8489–27–007, Revision 1, dated August 10, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 387 products of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $296,055, or $765 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more

detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2011–0159; Directorate Identifier 2010–NM–246–AD.

Comments Due Date

(a) We must receive comments by April 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, equipped with a horizontal stabilizer trim actuator having part numbers (P/Ns) 8489–5, 8489–6, 8489–7, and 8489–7R.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

An inspection by the vendor revealed that a number of Rubber Bull Gears (RBG) in the Horizontal Stabilizer Trim Actuator (HSTA) of the CL–600–2C10, CL–600–2D15 and CL–600–2D24 aeroplanes were installed with a wheel material hardness out of specification. This non-conformity has a direct impact on the HSTA life limit. The teeth of these non-conformant RBGs could break and in extreme cases, could lead to uncontrolled HSTA movement without the ability to re-trim the aeroplane. If not corrected, this condition could result in a difficulty to control the pitch and subsequent loss of the aeroplane.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modifying the HSTA

(g) For airplanes having any HSTA with S/N 107, 111, 124, 126, 135, 139, 142, 145, 146, 266, 268, 271, 274, 276, 277, 280, 282 through 285 inclusive, 290, 292, 294, 297, 299, 307, 309, 320, 337, 400, 402, 403, 410, 412, 418, 421 through 428 inclusive, 430, 435 through 439 inclusive, 441, 443 through 446 inclusive, 448 through 450 inclusive, 452 through 454 inclusive, 456, 459, 461, 463 through 470 inclusive, 472, 474 through 476 inclusive, 478, 545 through 549 inclusive, 570, 571, 573, 574, 600, 603, 608, 612 through 616 inclusive, 623, 627, and 629 through 659 inclusive: At the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD, replace the HSTA with a modified HSTA, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–058, dated August 31, 2010.

(1) For HSTAs that have accumulated 8,700 total flight cycles or less as of the effective date of this AD: Within 3,000 flight cycles from the effective date of this AD, or before the HSTA has accumulated 10,500 flight cycles, whichever occurs first.

(2) For HSTAs that have accumulated more than 8,700 total flight cycles as of the effective date of this AD: Within 1,800 flight cycles after the effective date of this AD.

(h) For airplanes having any HSTA with S/N 185, 479, 481, 482, 485, 487, 489, 491 through 496 inclusive, 498, 499, 501, 503, 504, 506, 507, 509, 512 through 514 inclusive, 517, 519 through 522 inclusive, 524, 526 through 528 inclusive, 530, 534 through 536 inclusive, 539, 542, and 543: Within 1,800 flight cycles after the effective date of this AD, replace the affected HSTA with a modified HSTA in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–058, dated August 31, 2010.

Parts Installation

(i) As of the effective date of this AD, no person may install a HSTA, having P/N 8489–5, 8489–6, 8489–7, or 8489–7R, with any serial numbers identified in paragraph (g) or (h) of this AD, on any airplane, unless that HSTA has been modified in accordance with SAGEM Service Bulletin 8489–27–007, Revision 1, dated August 10, 2010, and that HSTA has a suffix "B" beside the serial number.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. Send information to *Attn:* Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(k) Refer to MCAI Canadian Airworthiness Directive CF–2010–34, dated October 5, 2010; Bombardier Service Bulletin 670BA–27–058, dated August 31, 2010; and SAGEM Service Bulletin 8489–27–007, Revision 1, dated August 10, 2010, for related information.

Issued in Renton, Washington, on March 4, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–5722 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0216; Directorate Identifier 2010–NM–197–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * The pylon internal shear pin was found cracked during a regular check. Further investigation revealed that the failure occurred due to hydrogen embrittlement. The ANAC [Agência Nacional de Aviação Civil] is issuing this AD to prevent insufficient strength of the pylon to wing attachment, which in combination with an engine imbalance caused by a fan blade out could cause pylon to wing attachment failure and consequent engine separation.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 28, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; e-mail *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–227–2768; *fax:* 425–227–1149; *e-mail: cindy.ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0216; Directorate Identifier 2010–NM–197–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2010–08–02, dated September 20, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

* * * The pylon internal shear pin was found cracked during a regular check. Further investigation revealed that the failure occurred due to hydrogen embrittlement. The ANAC [Agência Nacional de Aviação Civil] is issuing this AD to prevent insufficient strength of the pylon to wing attachment, which in combination with an engine imbalance caused by a fan blade out could cause pylon to wing attachment failure and consequent engine separation.

* * * * *

Required actions include replacing pylon shear pins in the rear outboard and inboard shear pin assembly in the right- and left-hand pylons with new parts. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Service Bulletins 190–54–0010, dated May 19, 2010; and 190LIN–54–0001, dated June 21, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 73 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $2,360 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $234,330, or $3,210 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2011–0216; Directorate Identifier 2010–NM–197–AD.

Comments Due Date

(a) We must receive comments by April 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

* * * The pylon internal shear pin was found cracked during a regular check. Further investigation revealed that the failure occurred due to hydrogen embrittlement. The ANAC [Agência Nacional de Aviação Civil] is issuing this AD to prevent insufficient strength of the pylon to wing attachment, which in combination with an engine imbalance caused by a fan blade out could cause pylon to wing attachment failure and consequent engine separation.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replace Shear Pins

(g) For Model ERJ 190–100 STD, –100 LR, –100 IGW; and ERJ 190–200 STD, –200 LR, and –200 IGW airplanes: Within 3,000 flight hours after the effective date of this AD, replace the shear pins having part number (P/N) 190–15178–003 and P/N 190–15181–003 in the rear outboard and inboard shear pin assembly in the right- and left-hand pylons, with new shear pins having P/N 190–15178–005 and P/N 190–15181–005, respectively, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–54–0010, dated May 19, 2010.

(h) For Model ERJ 190–100 ECJ airplanes: Within 3,000 flight hours or within 12 months after the effective date of this AD, whichever occurs first, replace the shear pins having P/N 190–15178–003 and P/N 190–15181–003, in the rear outboard and inboard shear pin assembly in the right- and left-hand pylons, with new shear pins having P/N 190–15178–005 and P/N 190–15181–005, respectively, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190LIN–54–0001, dated June 21, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI allows credit for previous installation of internal shear pins in accordance with EMBRAER 190 Aircraft Maintenance Manual Task 54–50–00–400, Revision 19, dated July 15, 2010. This AD does not allow credit for this task; however, under the provisions of paragraph (i) of this AD, we will consider requests for an alternative method of compliance.

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to *Attn:* Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2768; fax (425) 227–1149. Information may be e-mailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(j) Refer to MCAI Agência Nacional de Aviação Civil (ANAC) Airworthiness Directive 2010–08–02, dated September 20, 2010; and EMBRAER Service Bulletins 190–54–0010, dated May 19, 2010, and 190LIN–54–001, dated June 21, 2010; for related information.

Issued in Renton, Washington, on March 4, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–5723 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0219; Directorate Identifier 2010–NM–228–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757–200, –200CB, and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require modifying the door latch fittings and witness mark placards of the off-wing escape slide systems; and for certain airplanes, replacing the bearings and lockbase retainer in the door latch assembly, relocating and adjusting of the sensor target and the sensor proximity switch, and testing to ensure positive door locking and corrective action if necessary. For certain airplanes, this proposed AD would also require installing a bumper assembly and placards. This proposed AD was prompted by reports of in-flight loss of the off-wing escape slide. We are proposing this AD to prevent in-flight loss of the off-wing escape slide, which could result in the unavailability of the escape slide during a time-critical evacuation. Additionally, the departed slide could cause damage to the fuselage, wing, flaps, or stabilizer, which could degrade flight control.

DATES: We must receive comments on this proposed AD by April 28, 2011.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; e-mail: *me.boecom@boeing.com*; Internet: *ttps://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kimberly DeVoe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6495; fax: 425–917–6590; e-mail: *Kimberly.Devoe@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0219; Directorate Identifier 2010–NM–228–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Since May 2005, four operators have reported seven events of in-flight loss of the off-wing escape slides. The off-wing escape slides did not inflate in flight. Due to latching failures of the compartment doors for the off-wing escape slides, in-flight maneuvering resulted in the departure of the slides from the airplane. The loss of the off-wing escape slide could result in the unavailability of the escape slide during a time-critical evacuation. Additionally, the departed slide could cause damage to the fuselage, wing, flaps, or stabilizer, which could degrade flight control.

Related Rulemaking

To address the in-flight loss of the off-wing escape slide we issued AD 99–17–20, Amendment 39–11266 (64 FR 45436, August 20, 1999), which was based on Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997; and Boeing Service Bulletin 757–25–0200, dated January 21, 1999. AD 99–17–20 requires modification of the door latch system on the off-wing escape slide compartment and installation of a bumper assembly on the bottom of the off-wing escape slide carriers on certain Model 757–200 and –300 series airplanes. However, it has been shown through service history that more corrective actions, in addition to AD 99–17–20, are needed to correct the unsafe condition.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 757–25–0298, dated October 16, 2008. This service bulletin describes procedures for modifying the forward and aft door latch fittings for the left and right off-wing escape slide systems and modifying the witness mark placards on the maintenance access door frames for the left and right off-wing escape slide systems. Additionally, this service bulletin specifies that the following

three service bulletins should be done before or at the same time as Boeing Special Attention Service Bulletin 757–25–0298, dated October 16, 2008.

Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001, specifies, for airplanes that have not been retrofitted using Boeing Service Bulletin 757–25–0182, dated October 10, 1996; or Boeing Service Bulletin 757–25–0182, Revision 1, dated June 12, 1997; procedures to modify the door latch system of the left and right off-wing emergency evacuation slide systems. The modification includes replacing the bearings and lockbase retainer in the compartment door latch assembly with new bearings and a new lockbase retainer, and relocating and adjusting the sensor target and the sensor proximity switch to forward locations on the evacuation slide compartment doors. For airplanes that have been retrofitted, Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001, specifies testing to determine that the compartment door sensor, as retrofitted, provides an accurate indication of the door lock condition. For airplanes on which the test indicates that the compartment door is not locking positively, Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001, specifies that the installed target is replaced with a new target and the switch is remounted on the new bracket.

Boeing Service Bulletin 757–25–0200, Revision 1, dated August 3, 2000 (for Model 757–200 and –200CB series airplanes); and Boeing Special Attention Service Bulletin 757–25–0219, dated August 3, 2000 (for Model 757–300 series airplanes); specify installing a bumper assembly on the left and right off-wing slide carriers, and installing new witness mark and instruction placards in the area of the maintenance access door.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD will affect 451 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification of fittings and placards: Service Bulletin (SB) 757–25–0298.	7 work-hours × $85 per hour = $595	$1,365	$1,960	$883,960.
Modification: Service Bulletin 757–25–0182	40 work-hours × $85 per hour = $3,400	$2,786	$6,186	$1,880,544 (304 airplanes).
Test: Service Bulletin 757–25–0182	2 work-hours × $85 per hour = $170	$0	$170	$76,670.
Bumper assembly and placards installation: Service Bulletin 757–25–0200.	4 work-hours × $85 per hour = $340	$457	$797	$272,574 (342 airplanes).
Bumper assembly and placards installation: Service Bulletin 757–25–0219.	4 work-hours × $85 per hour = $340	$457	$797	$0 (0 airplanes).

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed test. We have no way of determining the number of aircraft that might need these replacements.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement and remount; SB 757–25–0182	4 work-hours × $85 per hour = $340	$2,786	$3,126

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2011–0219; Directorate Identifier 2010–NM–228–AD.

Comments Due Date

(a) We must receive comments by April 28, 2011.

Affected ADs

(b) Certain requirements of this AD affect certain requirements of AD 99–17–20, Amendment 39–11266.

Applicability

(c) This AD applies to The Boeing Company Model 757–200, –200CB, and –300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 757–25–0298, dated October 16, 2008; with off-wing escape slide systems installed.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 25, Equipment and Furnishings.

Unsafe Condition

(e) This AD was prompted by reports of in-flight loss of the off-wing escape slide. We are issuing this AD to prevent in-flight loss of the off-wing escape slide, which could result in the unavailability of the escape slide during a time-critical evacuation. Additionally, the departed slide could cause damage to the fuselage, wing, flaps, or stabilizer, which could degrade flight control.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Modification

(g) Within 60 months after the effective date of this AD, modify the door latch fittings and witness mark placards of the left and right off-wing escape slide systems, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0298, dated October 16, 2008.

Concurrent Actions

(h) Concurrently with or before accomplishing the actions specified in paragraph (g) of this AD, do the applicable actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) For airplanes that have not been modified by Boeing Service Bulletin 757–25–0182, dated October 10, 1996; or Revision 1, dated June 12, 1997; as of the effective date of this AD: Modify the door latch system of the left and right off-wing emergency evacuation slide systems, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001.

(2) For airplanes that have been modified by Boeing Service Bulletin 757–25–0182, dated October 10, 1996; or Revision 1, dated June 12, 1997; as of the effective date of this AD: Do a test to verify that the modified compartment door sensor provides an accurate indication of the door lock condition, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001. If the test indicates that the compartment door is not locking positively, concurrently with or before accomplishing the actions specified in paragraph (g) of this AD, replace the target and remount the switch on the new bracket, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001.

(i) For airplanes identified in Boeing Service Bulletin 757–25–0200, Revision 1, dated August 3, 2000: Concurrently with or before accomplishing the actions required by paragraph (g) of this AD, install a bumper assembly on the left and right off-wing escape slide carriers, and install new placards in the area of the maintenance access door, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0200, Revision 1, dated August 3, 2000.

(j) For airplanes identified in Boeing Special Attention Service Bulletin 757–25–0219, dated August 3, 2000: Concurrently with or before accomplishing the actions required by paragraph (g) of this AD, install a bumper assembly on the left and right off-wing escape slide carriers, and install new placards in the area of the maintenance access door, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0219, dated August 3, 2000.

Terminating Action for Paragraph (a)(1) of AD 99–17–20

(k) Actions done in accordance with paragraph (h)(1) of this AD terminate the requirements of paragraph (a)(1) of AD 99–17–20.

Terminating Action for Paragraph (a)(2) of AD 99–17–20

(l) Actions done in accordance with paragraph (i) of this AD terminate the corresponding requirements of paragraph (a)(2) of AD 99–17–20.

Credit for Actions Accomplished in Accordance with Previous Service Information

(m) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 757–25–0200, dated January 21, 1999, are acceptable for compliance with the corresponding requirements of paragraphs (i) and (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Related Information

(o) For more information about this AD, contact Kimberly DeVoe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6495; fax: 425–917–6590; e-mail: *Kimberly.Devoe@faa.gov.*

(p) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; e-mail: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 3, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–5724 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0217; Directorate Identifier 2010–NM–165–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require a detailed inspection to detect distress and existing repairs to the leading edge structure of the vertical stabilizer at the splice at Station Zfs = 52.267; repetitive inspections for cracking in the front spar cap forward flanges of the vertical stabilizer, and either the aft flanges or side skins; repetitive inspections for loose and missing fasteners; and related investigative and corrective actions if necessary. This proposed AD was prompted by reports of cracked vertical stabilizer skin, a severed front spar cap, elongated fastener holes at the leading edge of the vertical stabilizer, and a cracked front spar web and front spar cap bolt holes in the vertical stabilizer. We are proposing this AD to detect and correct such cracking damage, which could result in the structure being unable to support limit load, and could lead to the loss of the vertical stabilizer.

DATES: We must receive comments on this proposed AD by April 28, 2011.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; phone: 206–544–5000, extension 2; fax: 206–766–5683; e-mail: *dse.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles ACO, FAA, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5233; fax: 562–627–5210; e-mail: *Roger.Durbin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0217; Directorate Identifier 2010–NM–165–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received two reports of cracked vertical stabilizer skin at Station Zfs = 52.267. Subsequent inspection revealed a severed front spar cap and a cracked front spar web. Cracks were also found on several other Model MD–80 airplanes in the front spar cap bolt holes of the vertical stabilizer. The affected Model MD–80 airplanes had accrued between 39,749 and 56,212 total flight hours and between 32,176 and 44,001 total landing cycles when the cracks/anomalies were found. The cause of the skin cracks is high loading occurrences, such as, but not limited to, in-flight turbulence. Cracks in the vertical stabilizer leading edge and front spar cap could result in the structure being unable to support limit load, and could lead to the loss of the vertical stabilizer.

Related Rulemaking

We are considering similar rulemaking for The Boeing Company Model MD–90–30 airplanes. The Model MD–90 airplane vertical stabilizer is similar in design and loading to that of the Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes vertical stabilizer.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010. The service information describes procedures for a detailed inspection to detect distress in and existing repairs to the leading edge structure of the vertical stabilizer at the splice at Station Zfs = 52.267, and corrective action if necessary. The corrective action is doing a leading edge repair, if the leading edge is distressed, by repairing or replacing the leading edge splice band of the vertical stabilizer. The service information defines "distress" as deformed holes, elongated holes, oversized holes or cracks in the leading edge skin and splice; and "existing repairs" as bushings, washers or reinforcing repairs to the leading edge.

The service information also describes procedures for repetitive inspections for cracking in the front spar cap of the vertical stabilizer using the inspections specified in Option 1 or Option 2 of the service information, and related investigative and corrective actions if necessary.

Option 1 involves an open hole eddy current high frequency (ETHF) inspection of the forward flanges and a radiographic testing inspection of the aft flanges; Option 2 involves an open hole ETHF inspection of the forward flanges and an ETHF surface inspection of the side skins of the aft flanges. For airplanes on which any cracking is found, the related investigative action is confirming the cracking through a specified evaluation/verification process. The corrective action is contacting Boeing and doing the repair in accordance with Boeing's instructions.

The service information also describes procedures for repetitive detailed inspections for indications of loose and missing fasteners of the stabilizer leading edge structure of the vertical at the splice at Station Zfs = 52.267, and corrective actions if necessary. The corrective action, if any loose or missing fasteners are found, is repairing the leading edge by repairing or replacing the leading edge splice band of the vertical stabilizer.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or

develop in other products of the same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Differences Between the Proposed AD and the Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve, or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD will affect 668 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for existing repairs, distress	10 work-hours × $85 per hour = $850	$0	$850	$567,800
Repetitive inspections for cracking and loose and missing fasteners.	7 work-hours × $85 per hour = $595	0	595	397,460

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2011–0217; Directorate Identifier 2010–NM–165–AD.

Comments Due Date

(a) We must receive comments by April 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55, Stabilizers.

Unsafe Condition

(e) This AD was prompted by reports of cracked vertical stabilizer skin, a severed front spar cap, elongated fastener holes at the leading edge of the vertical stabilizer, and a cracked front spar web and front spar cap bolt holes in the vertical stabilizer. We are issuing this AD to detect and correct such cracking damage, which could result in the structure being unable to support limit load, and could lead to the loss of the vertical stabilizer.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Inspections

(g) Within 4,500 flight cycles after the effective date of this AD, do a detailed inspection for distress in and existing repairs to the leading edge structure of the vertical stabilizer at the splice at Station Zfs = 52.267, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

Repetitive Inspections for Cracks, and Related Investigative and Corrective Actions

(h) Before further flight after doing the inspection required by paragraph (g) of this AD, inspect for cracks of the left and right vertical stabilizer front spar cap, in accordance with either Option 1 or Option 2 as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010. If any crack is found, before further flight, evaluate and verify to confirm all crack indications in accordance with the Accomplishment

Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

(1) If any cracking is confirmed, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) If no cracking is confirmed, repeat the inspection thereafter at intervals not to exceed the applicable interval specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) If the most recent inspection was done using Option 1, the next inspection must be done within 4,400 flight cycles.

(ii) If the most recent inspection was done using Option 2, the next inspection must be done within 3,000 flight cycles.

Leading Edge Repair

(i) If leading edge distress is found during the detailed inspection required by paragraph (g) of this AD, before further flight and after accomplishing the inspection required by paragraph (h) of this AD, repair the leading edge, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

Inspection for Loose/Missing Fasteners

(j) For airplanes on which no cracking is confirmed during the initial inspection required by paragraph (h) of this AD: At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, do a detailed inspection for indications of loose and missing fasteners, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010. If any loose or missing fastener is found, before further flight, repair the leading edge, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A067, dated June 24, 2010.

(1) If the inspection required by paragraph (h) was done using Option 1, do the inspection required by paragraph (j) of this AD within 4,400 flight cycles after accomplishing the inspection required by paragraph (h) of this AD.

(2) If inspection required by paragraph (h) was done using Option 2, do the inspection required by paragraph (j) of this AD within 3,000 flight cycles after accomplishing the inspection required by paragraph (h) of this AD

(k) For airplanes on which no cracking is confirmed during the most recent inspection required by paragraph (h) of this AD: Repeat the inspection for loose and missing fasteners required by paragraph (j) of this AD thereafter at intervals not to exceed the applicable time specified in paragraph (k)(1) or (k)(2) of this AD.

(1) If the most recent inspection required by paragraph (h) was done using Option 1, the next inspection required by paragraph (j) of this AD must be done within 4,400 flight cycles after accomplishing the most recent inspection required by paragraph (j) of this AD.

(2) If the most recent inspection required by paragraph (h) was done using Option 2, the next inspection required by paragraph (j) of this AD must be done within 3,000 flight cycles after the most recent inspection required by paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Related Information

(m) For more information about this AD, contact Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles ACO, FAA, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5233; fax: 562–627–5210; e-mail: *Roger.Durbin@faa.gov.*

(n) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; phone: 206–544–5000, extension 2; fax: 206–766–5683; e-mail: *dse.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, the FAA, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 4, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–5725 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0218; Directorate Identifier 2010–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require a detailed inspection to detect distress and existing repairs to the leading edge structure of the vertical stabilizer at the splice at Station Zfs=52.267; repetitive inspections for cracking in the front spar cap forward flanges of the vertical stabilizer, and either the aft flanges or side skins; repetitive inspections for loose and missing fasteners; and related investigative and corrective actions if necessary. This proposed AD was prompted by reports of cracked vertical stabilizer skin, a severed front spar cap, elongated fastener holes at the leading edge of the vertical stabilizer, and a cracked front spar web and front spar cap bolt holes in the vertical stabilizer. We are proposing this AD to detect and correct such cracking damage, which could result in the structure being unable to support limit load, and could lead to the loss of the vertical stabilizer.

DATES: We must receive comments on this proposed AD by April 28, 2011.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; *phone:* 206–544–5000, extension 2; fax: 206–766–5683; *e-mail:*

dse.boecom@boeing.com; Internet: https://www.myboeingfleet.com. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*, or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (*phone:* 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles ACO, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *phone:* 562–627–5233; fax: 562–627–5210; *e-mail: Roger.Durbin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0218; Directorate Identifier 2010–NM–164–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report of elongated fastener holes at the leading edge of the vertical stabilizer at station Zfs=52.267. The affected Model MD–90 airplane had accrued 15,555 total flight hours and 14,310 total landing cycles when the elongated fastener holes were found. Additionally, we have received two reports of Model MD–80 airplanes with cracked vertical stabilizer skin at station Zfs=52.267. Subsequent inspection revealed a severed front spar cap and a cracked front spar web. The affected Model MD–80 airplanes had accrued between 39,749 and 56,212 total flight hours and between 32,176 and 44,001 total landing cycles when the cracks/anomalies were found. Cracks were also found on several other Model MD–80 airplanes in the vertical stabilizer front spar cap bolt holes. The cause of the fastener damage, elongated fastener holes, and skin cracks is high loading occurrences, such as, but not limited to, in-flight turbulence. Cracks in the vertical stabilizer leading edge and front spar cap could result in the structure being unable to support limit load, and could lead to the loss of the vertical stabilizer.

Related Rulemaking

We are considering similar rulemaking for The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. The Model MD–90 airplane vertical stabilizer is similar in design and loading to that of the Model MD–80 airplane vertical stabilizer.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin MD90–55A014, dated June 24, 2010. The service information describes procedures for a detailed inspection to detect distress in, and existing repairs to the leading edge structure of the vertical stabilizer at the splice at Station Zfs=52.267, and corrective action if necessary. The corrective action is doing a leading edge repair, if the leading edge is distressed, by repairing or replacing the leading edge splice band of the vertical stabilizer. The service information defines "distress" as deformed holes, elongated holes, oversized holes or cracks in the leading edge skin and splice; and "existing repairs" as bushings, washers or reinforcing repairs to the leading edge.

The service information also describes procedures for repetitive inspections for cracking in the front spar cap of the vertical stabilizer using the inspections specified in Option 1 or Option 2 of the service information, and related investigative and corrective actions if necessary.

Option 1 involves an open hole eddy current high frequency (ETHF) inspection of the forward flanges and a radiographic testing inspection of the aft flanges; Option 2 involves an open hole ETHF inspection of the forward flanges and an ETHF surface inspection of the side skins of the aft flanges. For airplanes on which any cracking is found, the related investigative action is confirming the cracking through a specified evaluation/verification process. The corrective action is contacting Boeing and doing the repair in accordance with Boeing's instructions.

The service information also describes procedures for repetitive detailed inspections for indications of loose and missing fasteners of the leading edge structure of the vertical stabilizer at the splice at Station Zfs=52.267, and corrective actions if necessary. The corrective action, if any loose or missing fasteners are found, is repairing the leading edge by repairing or replacing the leading edge splice band of the vertical stabilizer.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Information."

Differences Between the Proposed AD and the Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve, or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD will affect 19 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for existing repairs, distress	10 work-hours × $85 per hour = $850	$0	$850	$16,150.
Repetitive inspections for cracking and loose and missing fasteners.	7 work-hours × $85 per hour = $595 per inspection cycle.	$0	$595 per inspection cycle.	$11,305 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition action specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2011–0218; Directorate Identifier 2010–NM–164–AD.

Comments Due Date

(a) We must receive comments by April 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model MD–90–30 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin MD90–55A014, dated June 24, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55, Stabilizers.

Unsafe Condition

(e) This AD was prompted by reports of cracked vertical stabilizer skin, a severed front spar cap, elongated fastener holes at the leading edge of the vertical stabilizer, and a cracked front spar web and front spar cap bolt holes in the vertical stabilizer. We are issuing this AD to detect and correct such cracking damage, which could result in the structure being unable to support limit load, and could lead to the loss of the vertical stabilizer.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Inspections for Distress/Repairs

(g) Within 4,100 flight cycles after the effective date of this AD, do a detailed inspection for distress in and existing repairs to the leading edge structure of the vertical stabilizer at the splice at Station Zfs=52.267, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A014, dated June 24, 2010.

Repetitive Inspections for Cracks, and Related Investigative and Corrective Actions

(h) Before further flight after doing the inspection required by paragraph (g) of this AD, inspect for cracks of the left and right vertical stabilizer front spar cap, in accordance with either Option 1 or Option 2 as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A014, dated June 24, 2010. If any crack is found, before further flight, evaluate and verify to confirm all crack indications, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A014, dated June 24, 2010.

(1) If any cracking is confirmed, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) If no cracking is confirmed, repeat the inspection thereafter at intervals not to exceed the applicable interval specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) If the most recent inspection was done using Option 1, the next inspection must be done within 4,400 flight cycles.

(ii) If the most recent inspection was done using Option 2, the next inspection must be done within 3,000 flight cycles.

Leading Edge Repair

(i) If leading edge distress is found during the detailed inspection required by paragraph (g) of this AD, before further flight and after accomplishing the inspection required by paragraph (h) of this AD, repair the leading edge, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A014, dated June 24, 2010.

Inspection for Loose/Missing Fasteners

(j) For airplanes on which no cracking is confirmed during the initial inspection required by paragraph (h) of this AD: At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, do a detailed inspection for indications of loose and missing fasteners, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A014, dated June 24, 2010. If any loose or missing fastener is found, before further flight, repair the leading edge, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A014, dated June 24, 2010.

(1) If the inspection required by paragraph (h) was done using Option 1, do the inspection required by paragraph (j) of this AD within 4,400 flight cycles after accomplishing the inspection required by paragraph (h) of this AD.

(2) If inspection required by paragraph (h) was done using Option 2, do the inspection required by paragraph (j) of this AD within 3,000 flight cycles after accomplishing the inspection required by paragraph (h) of this AD.

(k) For airplanes on which no cracking is confirmed during the most recent inspection required by paragraph (h) of this AD: Repeat the inspection for loose and missing fasteners required by paragraph (j) of this AD thereafter at intervals not to exceed the applicable time specified in paragraph (k)(1) or (k)(2) of this AD.

(1) If the most recent inspection required by paragraph (h) was done using Option 1, the next inspection required by paragraph (j) of this AD must be done within 4,400 flight cycles after accomplishing the most recent inspection required by paragraph (j) of this AD.

(2) If the most recent inspection required by paragraph (h) was done using Option 2, the next inspection required by paragraph (j) of this AD must be done within 3,000 flight cycles after the most recent inspection required by paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Related Information

(m) For more information about this AD, contact Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles ACO, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *phone:* 562–627–5233; *fax:* 562–627–5210; *e-mail: Roger.Durbin@faa.gov.*

(n) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; *phone:* 206–544–5000, extension 2; *fax:* 206–766–5683; *e-mail: dse.boecom@boeing.com*; Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, the FAA, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 4, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–5726 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Chapter IX

50 CFR Chapters II, III, IV, and VI

RIN 0648–XA282

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request for information.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is preparing a preliminary plan to review its existing significant regulations in response to the President's Executive Order 13563 on Improving Regulation and Regulatory Review. The purpose of NOAA's review is to make the agency's regulatory program more effective and less burdensome in achieving its regulatory objectives by identifying those regulations that should be modified, streamlined, expanded or repealed. NOAA is asking for ideas and information from the public in preparing its preliminary plan explaining how it will conduct such a review.

DATES: You must submit any comments on or before April 4, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648–XA282, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- *Fax:* 301–713–0596, Attn: William Chappell.
- *Mail:* 1315 East-West Highway, SSMC3, SF5, Room 13142, Silver Spring, MD 20910.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: William Chappell, 301–713–2337, x169.

SUPPLEMENTARY INFORMATION: The National Oceanic and Atmospheric Administration is a Federal agency that is part of the U.S. Department of Commerce. NOAA's mission is to understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs. NOAA administers a broad range of statutes, including, but not limited to the Endangered Species Act, 16 U.S.C. 1531, *et seq.;* Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801, *et seq.;* Marine Mammal Protection Act, 16 U.S.C. 1361, *et seq,* National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.;* Coastal Zone Management Act, 16 U.S.C. 1415, *et seq.;* and Land Remote Sensing Policy Act, 15 U.S.C. 5601, *et seq.*

On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. Among other things, the Executive Order directed agencies to develop and submit a preliminary plan within 120 days that will explain how they will periodically review existing significant regulations to identify any regulations that can be made more effective or less burdensome in achieving regulatory objectives.

To implement the Executive Order, NOAA is taking several immediate steps to launch its retrospective review of existing regulatory requirements. Consistent with its commitment to public participation, NOAA is soliciting views from the public on how best to conduct its analysis of existing NOAA rules and how best to identify those rules that might be modified, streamlined, expanded or repealed. NOAA promulgates rules in accordance with applicable laws and based on best available scientific information, analyses of different alternatives for

agency action, and public participation and input. However, important information as to the consequences of a rule, including its costs and benefits, comes from practical, real-world experience (both on the part of the public and on the part of the agency) after rules have been implemented. Regulated entities and members of the public affected by or interested in NOAA's regulations are likely to have useful information and perspectives on the benefits and burdens of existing requirements beyond what was available at the time regulations were issued. Interested parties may also be well-positioned to identify those rules that are most in need of review; NOAA would find such input helpful as it considers how to prioritize and properly tailor its retrospective review process for significant regulations. In short, engaging the public in an open, transparent process is a crucial step in NOAA's review of its existing regulations.

NOAA recognizes that the public comment period set forth in this Request for Information (RFI) is shorter than the 30–60 day (or longer) comment periods that may be used for proposed rules. That is because of consideration of the timing requirements under the Executive Order, and because NOAA is not asking for detailed comments on the substance of specific regulation, only comments pertaining to the retrospective review plan which is under development.

Questions for the Public

Comments will be most helpful if they provide examples and a detailed explanation of how the suggestion will support NOAA's mission in a way that is more efficient and less burdensome. In providing comments, please keep these key considerations in mind:

- Retrospective review does not allow NOAA to contravene requirements of its various statutory mandates. In addition, where NOAA's discretion has been limited by law, as is the case with fishery management plans and regulations developed by Regional Fishery Management Councils under the Magnuson-Stevens Act, 16 U.S.C. 304, NOAA's ability to modify, streamline, expand, or repeal regulations is similarly constrained.
- NOAA currently conducts periodic review of existing regulations pursuant to statutory mandates. For instance, NOAA's Office of National Marine Sanctuaries is required by the National Marine Sanctuaries Act, 16 U.S.C. 1434(e), to periodically review sanctuary management plans to ensure that sanctuary management continues to best conserve, protect, and enhance the nationally significant living and cultural resources at each site. Such review provides sanctuary management with an ongoing opportunity to review existing regulations, amend existing regulations (as deemed necessary), and generally outline future regulatory goals in the management plans. Similarly, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, NOAA's National Marine Fisheries Service (as delegated from the Secretary of Commerce) is required to review at routine intervals that may not exceed two years any fishery management plans, plan amendments, or regulations for fisheries that are experiencing overfishing or in need of rebuilding. 16 U.S.C. 1854(e)(7). For many fisheries, revisions to plans and regulations occur with even greater frequency, as National Standard 2 of the Magnuson-Stevens Act requires that conservation and management measures be based on the best scientific information available. *Id.* § 1851(a)(2). We seek your input on developing a review plan that is integrated with those existing requirements.
- Our plan will be tailored to reflect our resources, rulemaking history, and the volume of significant regulations at issue.

NOAA intends the questions below to elicit useful information as the agency develops a preliminary plan for possible review of its significant regulations. These questions are not intended to be exhaustive. You may raise other issues or make suggestions unrelated to these questions that you believe would help the agency develop better regulations.

(1) How can NOAA review its existing significant rules in a way that will identify rules that can and should be changed, streamlined, consolidated, or removed? NOAA encourages those submitting comments to include a proposed process under which such a review could be regularly undertaken.

(2) How can NOAA reduce burdens and maintain flexibility and choice for the public in a way that will promote and achieve its mission?

(3) Does NOAA have rules or guidance that are duplicative or that have conflicting requirements among its components or with other agencies? If so, please specifically identify the rules or guidance and suggest ways NOAA can streamline, consolidate, or make these regulations work better.

(4) Are there better ways to encourage public participation and an open exchange of views when NOAA engages in rulemaking?

(5) Are there rules or guidance that is working well that could be used as models for improving other regulations? If so, please specifically identify the rule or guidance.

(6) Are NOAA regulations and guidance written in language that is clear and easy to understand, consistent with statutory requirements? Please identify specific regulations and guidance that are good candidates for a plain language re-write and also identify regulations that are written clearly that could be used as models.

(7) What are some suggestions that NOAA can use to assure that its regulations promote and achieve its mission in ways that are efficient and less burdensome?

(8) Which significant regulations have proven to be excessively burdensome? What data support this? What suggestions do you have for reducing the burden and maintaining and achieving NOAA's mission?

(9) Which significant regulations could be made more flexible within the existing legal framework? What data support this?

(10) Are there regulations that have become ineffective or been overtaken by technological or other change and, if so, what are they? How can they be modernized to accomplish the statutory or regulatory objective better?

NOAA will consider public input as we develop a plan to periodically review the agency's significant rules.

NOAA notes that this Request for Information is issued solely for information and program-planning purposes. The agency will give careful consideration to the responses, and may use them as appropriate during the retrospective review, but we do not anticipate providing a response to each comment submitted. While responses to this RFI do not bind NOAA to any further actions related to the response, all submissions will be made publically available on *http://www.regulations.gov.*

Dated: March 7, 2011.

Lois J. Schiffer,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–5681 Filed 3–11–11; 8:45 am]

BILLING CODE 3510–12–P

FEDERAL TRADE COMMISSION

16 CFR Part 301

RIN 3084–AB26

Fur Products Labeling Act

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: In December 2010, Congress passed the Truth in Fur Labeling Act (TFLA), which amends the Fur Products Labeling Act (Fur Act) by: (1) Eliminating the Commission's discretion to exempt fur products of relatively small quantity or value from disclosure requirements; and (2) providing that the Fur Act will not apply to certain fur products obtained through trapping or hunting and sold in face to face transactions. TFLA also directs the Commission to review and allow comment on the Fur Products Name Guide (Name Guide). Accordingly, the Commission publishes this Advance Notice of Proposed Rulemaking (ANPR) and request for comment. In addition to seeking comment on the Name Guide, the Commission, as part of its systematic review of all current FTC rules and guides, requests comment on all of its Fur Act regulations (Fur Rules or Rules).

DATES: Written comments must be received by May 16, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following Web link: *https://ftcpublic.commentworks.com/ftc/furrulesreview* (and following the instructions on the Web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex O), 600 Pennsylvania Avenue, NW., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Matthew Wilshire, (202) 326–2976, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Fur Act and Rules

The Fur Act prohibits misbranding and false advertising of fur products, and requires labeling of most fur products. 15 U.S.C. 69 *et seq.* Pursuant to this Act, the Commission promulgated the Fur Rules to establish disclosure requirements that assist consumers in making informed purchasing decisions. 16 CFR part 301. Specifically, the Fur Act and Rules require fur manufacturers, dealers, and retailers to place labels on products made entirely or partly of fur disclosing: (1) The animal's name as provided in the Name Guide; (2) the presence of any used, bleached, dyed, or otherwise artificially colored fur; (3) that the garment is composed of paws, tails, bellies, or waste fur, if that is the case; (4) the name or Registered Identification Number of the manufacturer or other party responsible for the garment; and (5) the garment's country of origin. 15 U.S.C. 69b(2); 16 CFR 301.2(a). In addition, manufacturers must include an item number or mark on the label for identification purposes. 16 CFR 301.40. The Fur Rules also provide requirements for advertising fur products. 16 CFR 301.38. Finally, to assist the Commission in enforcing these requirements, the Rules contain recordkeeping requirements. 16 CFR 301.37; 301.41.

Prior to amendment by TFLA, the Fur Act authorized the Commission to exempt fur products of "relatively small quantity or values from labeling requirements. 15 U.S.C. 69(d). Exercising this soon-to-expire authority, the Fur Rules contain a *de minimis* exemption" that provides:

> If the cost of any fur trim or other manufactured fur or furs contained in a fur product, exclusive of any costs incident to its incorporation therein, does not exceed one hundred fifty dollars ($150) to the manufacturer of the finished fur product, or if a manufacturer's selling price of a fur product does not exceed one hundred fifty dollars ($150), and the provisions of paragraphs (b) and (c) of this section are met, the fur product shall be exempted from the requirements of the Act and Regulations in this part. * * * 16 CFR 301.39(a).

Thus, prior to TFLA's effective date, retailers can lawfully sell garments containing fur or fur trim with a component value of $150 or less without a fur-content label.

B. TFLA

On December 18, 2010, the President signed TFLA into law. That Act contains two amendments to the Fur Act. First, it eliminates the provision in Section 2(d) of the Fur Act that empowered the Commission to exempt fur products "of relatively small quantity or value of the fur or used fur contained therein 15 U.S.C. 69(d). This amendment is effective 90 days from TFLA's enactment—March 18, 2011. Public Law 111–113, § 2. Second, TFLA provides a new exemption for furs sold directly by trappers and hunters to end-use customers in certain face-to-face transactions ("hunter/trapper exemptions):

> No provision of [the Fur Act] shall apply to a fur product—(1) the fur of which was obtained from an animal through trapping or hunting; and (2) when sold in a face to face transaction at a place such as a residence, craft fair, or other location used on a temporary or short term basis, by the person who trapped or hunted the animal, where the revenue from the sale of apparel or fur products is not the primary source of income of such person. Pub. L. No. 111–113, § 3.

TFLA also directs the Commission to initiate a review and opportunity to comment on the Name Guide. TFLA gives the Commission 90 days from enactment to commence the review.

II. Future Rule Amendments

TFLA's amendments will require conforming changes to the Fur Rules. Specifically, there will no longer be a statutory basis for the Fur Rules' *de minimis* exemption, and previously exempted fur products will require labels. Therefore, the Commission must delete the exemption from its Rules. In addition, the Commission will propose revisions making clear that the Fur Rules do not apply to products covered by TFLA hunter/trapper exemption.

Accordingly, the Commission will issue a Notice of Proposed Rulemaking that will propose changes in light of TFLA and may propose other changes in response to comments solicited by this document. Meanwhile, fur products previously covered by the *de minimis* exemption will be subject to the Fur Act's disclosure requirements, as of March 18, 2011, even though the exemption will remain in the Fur Rules until the Commission issues final amendments. Congress has rescinded the Commission's authority to exempt such products, and, therefore, there is no longer a legal basis for the *de minimis* exemption.

III. Regulatory Review Program

In light of TFLA's directive, and consistent with the Commission's policy to periodically review its rules and guides, the Commission solicits comments on the Fur Rules in general and the Name Guide in particular. In addition to comments regarding the Name Guide, the Commission seeks comment on, among other things, the economic impact of, and the continuing need for, the Fur Rule provisions; the benefits of the Rules to consumers; and the burdens the Rules place on those subject to its requirements. The Commission seeks comment on the specific questions listed below in Section IV.

IV. Request for Comment

The Commission solicits comment on the following specific questions related to the Fur Rules:

(1) Is there a continuing need for the Rules as currently promulgated? Why or why not?

(2) What benefits have the Rules provided to consumers? What evidence supports the asserted benefits?

(3) What modifications, if any, should the Commission make to the Rules to increase their benefits to consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rules for consumers?

(c) How would these modifications affect the costs and benefits of the Rules for businesses, particularly small businesses?

(4) What impact have the Rules had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

(5) What significant costs have the Rules imposed on consumers? What evidence supports the asserted costs?

(6) What modifications, if any, should be made to the Rules to reduce the costs imposed on consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rules for consumers?

(c) How would these modifications affect the costs and benefits of the Rules for businesses, particularly small businesses?

(7) What benefits, if any, have the Rules provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

(8) What modifications, if any, should be made to the Rules to increase its benefits to businesses, and particularly to small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rules for consumers?

(c) How would these modifications affect the costs and benefits of the Rules for businesses?

(9) What significant costs, including costs of compliance, have the Rules imposed on businesses, particularly small businesses? What evidence supports the asserted costs?

(10) What modifications, if any, should be made to the Rules to reduce the costs imposed on businesses, and particularly on small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rules for consumers?

(c) How would these modifications affect the costs and benefits of the Rules for businesses?

(11) Provide any evidence concerning consumer perception of the fur names required by the Name Guide. Does this evidence indicate that the Rules should be modified? If so, why, and how? If not, why not?

(12) Provide any evidence concerning whether the Commission should alter the Name Guide to include additional fur names or to eliminate certain names already listed. Does this evidence indicate that the Rules should be modified? If so, why, and how? If not, why not?

(13) What evidence is available concerning the degree of industry compliance with the Rules? Does this evidence indicate that the Rules should be modified? If so, why, and how? If not, why not?

(14) Are any of the Rules' requirements no longer needed? If so, explain. Please provide supporting evidence.

(15) What potentially unfair or deceptive practices concerning the labeling and advertising of fur products, if any, are not covered by the Rules?

(a) What evidence demonstrates the existence of such practices?

(b) With reference to such practices, should the Rules be modified? If so, why, and how? If not, why not?

(16) Should the Rules continue to require that fur products manufactured for use in pairs or groups be firmly attached to each other when delivered to the purchaser-consumer or be individually labeled? Why or why not? Please provide any supporting evidence.

(17) What modifications, if any, should be made to the Rules to account for changes in relevant technology or economic conditions?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

(18) Do the Rules overlap or conflict with other Federal, State, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rules be modified? If so, why, and how? If not, why not?

(19) Are there foreign or international laws, regulations, or standards with respect to the fur labeling that the Commission should consider as it reviews the Rules? If so, what are they?

(a) Should the Rules be modified in order to harmonize with these foreign or international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Fur Rules Review, Matter No. P074201" to facilitate the organization of comments. We must receive your comment by May 16, 2011. 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 comments will be made public, they should 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. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act (AFTC Act), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled AConfidential, and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following Web link: *https://ftcpublic.commentworks.com/ftc/furrulesreview* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Web link *https://ftcpublic.commentworks.com/ftc/furrulesreview.* If this notice of proposed rulemaking appears at *http://www.regulations.gov/search/Regs/home.html#home,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov* to read the notice of proposed rulemaking and the news release describing it.

A comment filed in paper form should include the "Fur Rules Review, Matter No. P074201" 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 O), 600 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

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–5757 Filed 3–11–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 33

RIN 1505–AC30

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 155

[CMS–9987–P]

RIN 0938–AQ75

Application, Review, and Reporting Process for Waivers for State Innovation

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS; Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth a procedural framework for submission and review of initial applications for a Waiver for State Innovation described in section 1332 of the Patient Protection and the Affordable Care Act including processes to ensure opportunities for public input in the development of such applications by States and in the Federal review of the applications.

DATES: Comments are due on or before May 13, 2011.

ADDRESSES: Written comments may be submitted to any of the addresses specified below. Any comment that is submitted to one Department will be shared with the other Department. Please do not submit duplicates.

Department of the Treasury. Interested members of the public are invited to submit comments on this proposed rule. Comments may be submitted to Treasury by either of the following methods: Submit electronic comments through the Federal government e-rulemaking portal, *http://www.regulations.gov,* or send comments in hard copy to: Office of Benefits Tax Counsel, Attention: Waivers for State Innovation, Room 3050, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, Treasury will post all comments to *http://www.regulations.gov* without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Room 1428, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. Members of the public can make an appointment to inspect comments by telephoning (202) 622–0990. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make available publicly.

Centers for Medicare & Medicaid Services. In commenting, please refer to file code CMS–9987–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 "Submit a comment" instructions.

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–9987–P, P.O. Box 8016, Baltimore, MD 21244–8016.

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–9987–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) 786–7195 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.

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.

FOR FURTHER INFORMATION CONTACT:

Department of the Treasury: Carrie Simons, (202) 622–0044.

Centers for Medicare & Medicaid Services: Ben Walker, (301) 492–4430.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1332 of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111–148, enacted on March 23, 2010) creates a new Waiver for State Innovation and authorizes the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury (the Secretaries) to waive all or any of the following requirements falling under their respective jurisdictions for health insurance coverage within a State for plan years beginning on or after January 1, 2017:

- Part I of subtitle D of Title I of the Affordable Care Act (relating to the establishment of qualified health plans);
- Part II of subtitle D of Title I of the Affordable Care Act (relating to consumer choices and insurance competition through health benefit exchanges);
- Section 1402 of the Affordable Care Act (relating to reduced cost sharing for individuals enrolling in qualified health plans); and
- Sections 36B (relating to refundable credits for coverage under a qualified health plan), 4980H (relating to shared responsibility for employers regarding health coverage), and 5000A (relating to the requirement to maintain minimum essential coverage) of the Internal Revenue Code.

Section 1332 of the Affordable Care Act provides that references in that section to "Secretary" refer to the Secretary of Health and Human Services for waivers relating to Parts I and II of subtitle D of Title I of the Affordable Care Act and section 1402 of the Affordable Care Act, and refer to the Secretary of the Treasury for waivers relating to sections 36B, 4980H, and 5000A of the Internal Revenue Code.

Section 1332(a)(4)(B) of the Affordable Care Act requires the Secretaries to issue regulations that provide the following:

- A process for public notice and comment at the State level, including public hearings, that is sufficient to ensure a meaningful level of public input (section 1332(a)(4)(B)(i) of the Affordable Care Act);
- A process for the submission of an application that ensures the disclosure of (A) the provisions of law that the State involved seeks to waive, and (B) the specific plans of the State to ensure that the waiver will be in compliance with specified statutory requirements relating to the comprehensiveness of coverage, affordability of coverage, scope of coverage, and the effect on Federal deficit (as described below) (section 1332(a)(4)(B)(ii) of the Affordable Care Act);
- A process for providing public notice and comment after the application is received by the applicable Secretary or Secretaries, that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedure Act (APA), or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance (section 1332(a)(4)(B)(iii) of the Affordable Care Act);
- A process for the submission to the applicable Secretary or Secretaries of periodic reports by the State concerning the implementation of the program under a waiver (section 1332(a)(4)(B)(iv) of the Affordable Care Act); and
- A process for the periodic evaluation by the applicable Secretary or Secretaries of the program under a waiver (section 1332(a)(4)(B)(v) of the Affordable Care Act).

Although section 1332 of the Affordable Care Act does not authorize waivers for related programs like Medicaid (title XIX of the Social Security Act) or the Children's Health Insurance Program (title XXI of the Social Security Act), those programs have existing waiver authorities. Section 1332(a)(5) of the Affordable Care Act requires the Secretaries to develop a process for coordinating and consolidating the State waiver processes applicable under the provisions of section 1332 of the Affordable Care Act with the existing waiver processes applicable under titles XVIII (Medicare), XIX (Medicaid), and XXI (Children's Health Insurance Program, or CHIP) of the Social Security Act, and any waiver processes under other Federal laws relating to the provision of health care items or services. Section 1332(a)(5) of the Affordable Care Act further requires the process developed by the Secretaries to permit a State to submit a single application for a waiver under any or all of those provisions.

This proposed rule would implement the procedural requirements of section 1332 of the Affordable Care Act. The proposed rule is intended to provide for a waiver application process that can be coordinated and consolidated with the processes for the submission of applications for waivers under titles XVIII, XIX, and XXI of the Social Security Act.

II. Overview of the Proposed Regulations: Section 1332 of the Affordable Care Act, Waiver for State Innovation (31 CFR Part 33 and 45 CFR Part 155)

A. Introduction

To implement the provisions of section 1332 of the Affordable Care Act, the Department of the Treasury proposes to add new part 33 to 31 CFR subtitle A and the Centers for Medicare & Medicaid Services, on behalf of the Department of Health and Human Services, proposes to add new part 155 to 45 CFR Subtitle A. These new parts would address procedures for State development and submission of an application for a Waiver for State Innovation under section 1332 of the Affordable Care Act (referred to in the proposed regulations as a section 1332 waiver), a process for providing public notice and opportunity for comment at the State and Federal levels, a process for the review of applications by the Secretaries, and processes for the monitoring and evaluation of approved section 1332 waivers by the States and the Secretaries, including the periodic submission of reports by the States to the Secretaries.

B. Coordinated Waiver Process (31 CFR 33.102 and 45 CFR 155.1302)

These proposed regulations at 31 CFR 33.102 and 45 CFR 155.1302 permit, but do not require, States to submit a single application for a section 1332 waiver and a waiver under one or more of the existing waiver processes applicable under titles XVIII, XIX, and XXI of the Social Security Act, or under any other Federal law relating to the provision of health care items or services, provided that the application is consistent with the procedures described in these proposed regulations, the procedures for section 1115 demonstrations, if applicable, and the procedures under any other applicable Federal law under which the State seeks a waiver.[1]

The proposed regulations require a State seeking a section 1332 waiver to submit a waiver application to the Secretary of HHS. Upon receipt, the Secretary of HHS will transmit any

[1] Although section 1332 of the Affordable Care Act does not authorize waivers for related programs like Medicaid (title XIX of the Social Security Act) or the Children's Health Insurance Program (title XXI of the Social Security Act), those programs have existing waiver authorities.

application that includes a request for a waiver of provisions under the jurisdiction of the Secretary of the Treasury (sections 36B, 4980H and 5000A of the Internal Revenue Code) to be reviewed in accordance with the provisions of these proposed regulations. The Secretaries will coordinate the review of any application that includes a request for a waiver of provisions falling under the jurisdiction of each of the Departments of Health and Human Services and the Treasury (the Departments).

C. Application Procedures (31 CFR 33.108 and 45 CFR 155.1308)

These proposed regulations establish procedures for the submission of applications for an initial section 1332 waiver.

Under 31 CFR 33.108(a) and 45 CFR 155.1308(a) of the proposed regulations, the Secretaries will subject each application for an initial section 1332 waiver to a preliminary review. The Secretaries will complete the preliminary review within 45 days after the application is submitted.

During this preliminary review period, the Secretaries will make a preliminary determination as to whether a State's application complies with the requirements set forth in 31 CFR 33.108(a)(2) and 45 CFR 155.1308(a)(2). If the Secretaries determine that an application is incomplete, the Secretary of HHS will send the State a written notice of the elements missing from the application. These proposed regulations provide that a preliminary determination that an application is complete does not preclude a finding during the 180-day Federal decision-making period that a necessary element of the application is missing or insufficient, rendering the application incomplete.

These proposed regulations provide that a submitted application will not be considered received until the Secretaries have made this preliminary determination that the application is complete. This timing protocol is necessary to ensure that the Federal public notice and comment period and the 180-day Federal decision-making period are based on applications that the Secretaries preliminarily determine to be complete, and that all relevant information is available for review during those periods.

The proposed regulations provide that, upon a preliminary determination by the Secretaries that an application they have received is complete, as defined under these proposed regulations, the Secretary of HHS will send the State a written notice informing the State that the Secretaries have made such a preliminary determination, and the date upon which they have made that preliminary determination. That date will also mark the beginning of the Federal public notice and comment period and the 180-day Federal decision-making period.

Under the proposed regulations, an application for initial approval of a section 1332 waiver will not be considered complete unless the application: (1) Complies with the application procedures of 31 CFR 33.108(a)(2)(iv) and 45 CFR 155.1308(a)(2)(iv); (2) provides written evidence of the State's compliance with the public notice requirements set forth in 31 CFR 33.112 and 45 CFR 155.1312; and (3) provides all of the following:

- A comprehensive description of the State legislation and program to implement a plan meeting the requirements for a waiver under section 1332, as required under section 1332(a)(1)(B)(i) of the Affordable Care Act;
- A copy of the enacted State legislation authorizing such waiver request, as required under section 1332(a)(1)(C) of the Affordable Care Act;
- A list of the provisions of law that the State seeks to waive including a brief description of the reason for the specific requests; and
- The analyses, actuarial certifications, data, assumptions, targets and other information sufficient to provide the Secretaries with the necessary data to determine that the State's proposed waiver:

+ Will, as required under section 1332(b)(1)(A) of the Affordable Care Act (the comprehensive coverage requirement), provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) of the Affordable Care Act and offered through Exchanges established under Title I of the Affordable Care Act as certified by the Office of the Actuary of the Centers for Medicare and Medicaid Services based on sufficient data from the State and from comparable States about their experience with programs created by the Affordable Care Act and the provisions of the Affordable Care Act that would be waived;

+ Will, as required under section 1332(b)(1)(B) of the Affordable Care Act (the affordability requirement), provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of Title I of the Affordable Care Act would provide;

+ Will, as required under section 1332(b)(1)(B)(C) of the Affordable Care Act (the scope of coverage requirement), provide coverage to at least a comparable number of its residents as the provisions of Title I of the Affordable Care Act would provide; and

+ Will not, as prohibited under section 1332(b)(1)(D) of the Affordable Care Act (the Federal deficit requirement), increase the Federal deficit.

Section 1332(a)(3) of the Affordable Care Act requires that the Secretaries provide for an alternative means by which the aggregate amount of tax credits or cost-sharing reductions that would have been paid had the State not received a waiver, be paid to the State for purposes of implementing the waiver. This amount will be determined annually by the Secretaries, on a per capita basis, taking into consideration the experience of other States for participation in an Exchange and tax credits and cost-sharing reductions provided in such other States.

To provide information necessary for the Secretaries to determine (1) that the State's proposed waiver meets the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement and the Federal deficit requirement and (2) the annual amount, if any, of foregone tax credits and cost-sharing reductions that will be paid to the State for purposes of implementing the waiver pursuant to section 1332(a)(3) of the Affordable Care Act, the proposed regulation requires that a State's application contain:

(1) Actuarial analyses and actuarial certifications to support the State's estimates that the proposed waiver will comply with the comprehensive coverage requirement, the affordability requirement and the scope of coverage requirement.

(2) Economic analyses to support the State's estimates that the proposed waiver will comply with the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement and the Federal deficit requirement, including:

- A detailed 10-year budget plan that is deficit neutral to the Federal government, as prescribed in section 1332(a)(1)(B)(ii) of the Affordable Care Act, and includes all costs under the waiver, including administrative costs and other costs to the Federal government, if applicable; and
- A detailed analysis regarding the estimated impact of the waiver on health insurance coverage in the State.

(3) The data and assumptions used to demonstrate that the State's proposal is in compliance with the comprehensive coverage requirement, the affordability requirement, the scope of coverage

requirement and the Federal deficit requirement, including:

• Information on the age, income, health expenses and current health insurance status of the relevant State population; the number of employers, categorized by number of employees and by whether the employer offers health insurance; cross-tabulations of these variables; and an explanation of data sources and quality; and

• An explanation of the key assumptions and methodology used to develop the estimates of the effect of the waiver on health insurance coverage in the State and on the Federal budget, such as individual and employer participation rates, behavioral changes, premium and price effects, and other relevant factors.

(4) Additional information supporting the State's proposed waiver, including:

• An explanation as to whether the waiver increases or decreases the administrative burden on individuals, insurers, and employers, and if so, how and why;

• An explanation of whether and how the waiver will affect the implementation of the provisions of the Affordable Care Act which the State is not requesting to waive in the State and at the Federal level;

• An explanation of how the waiver will affect residents who need to obtain health care services out-of-State, as well as the States in which such residents may seek such services;

• If applicable, an explanation of how the State will provide the Federal government with all information necessary to administer the waiver at the Federal level; and

• An explanation of how the State's proposal will address potential individual, employer, insurer, or provider compliance, waste, fraud and abuse within the State or in other States.

(5) For purposes of post-award monitoring, suggested quarterly, annual, and cumulative targets for the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement and the Federal deficit requirement of section 1332(b) of the Affordable Care Act.

(6) Other information consistent with guidance provided by the Secretaries.

Under the proposed regulations, there is no minimum time specified between the submission of an application and start date of the waiver. However, we solicit comments on whether a State should be required to submit an application at least 12 months in advance of the requested effective date, in order to allow for the effective implementation of approved waivers at the State level.

The requirement in the proposed regulation that a State provide certain analysis, certifications, data, assumptions, targets and other information as part of a section 1332 waiver application is designed to ensure that a State's development of a waiver proposal addresses major relevant issues for the State and provides the Secretaries with sufficient information to fully assess the projected impact of section 1332 waiver proposals for the statutory requirements and to accurately determine the amount to be paid to the State for purposes of implementing the waiver under section 1332(a)(3) of the Affordable Care Act. The Secretaries also solicit comments regarding these proposed requirements, as well as what other types of analysis, certifications, data, assumptions, targets and information States would consider useful in supporting an application for a section 1332 waiver and whether these regulations should specifically require such additional analyses, certifications, data, assumptions, targets and information to be included as part of a section 1332 waiver application.

Lastly, during the Federal review process, the proposed regulation provides that the Secretaries may request additional supporting information from the State as needed to address public comments or to address issues that arise in reviewing the application.

D. State Public Notice Requirements (31 CFR 33.112 and 45 CFR 155.1312)

Consistent with the provisions of section 1332 of the Affordable Care Act, to facilitate public involvement in the review and approval of section 1332 waiver applications, 31 CFR 33.112(a)(1) and 45 CFR 155.1312(a)(1) of the proposed regulations require a State to provide a public notice and comment period sufficient to ensure a meaningful level of public input for a section 1332 waiver application prior to the submission of that application to the Secretary of HHS for review and consideration. In addition, the proposed regulations require a State with one or more Federally-recognized Indian tribes within its borders to consult with those Indian tribes in accordance with Executive Order 13175.

Because meaningful input requires notice of the nature of the section 1332 waiver application, as part of the State notice and comment period, the proposed regulations require a State to provide the public with the following prior to the submission of an application:

• A comprehensive description of the section 1332 waiver application to be submitted to the Secretary of HHS, including information and assurances related to all statutory requirements and other information consistent with guidance provided by the Secretaries;

• Where copies of the section 1332 waiver application are available for public review and comment;

• How and where written comments may be submitted and reviewed by the public, and the timeframe during which public comments may be submitted; and

• The location, date and time of public hearings that will be convened by the State to seek public input on the section 1332 waiver application.

31 CFR 33.112(a)(2) and 45 CFR 155.1312(a)(2) of the proposed regulations require States to conduct public hearings that provide interested parties with the opportunity to learn about and comment on the contents of the section 1332 waiver application.

The State public notice and comment process must comply with applicable civil rights rules for accessibility, which require, for example—

• The provision of auxiliary aids and services such as interpreters for persons with disabilities where necessary for effective communication;

• The use of accessible meeting places for the hosting of public forums provided for in the Rule;

• Reasonable steps to provide meaningful access for limited English proficient (LEP) persons, such as the inclusion of "tag lines" on State web sites containing phone numbers for LEP persons to call to reach "language line" interpreters for assistance; and

• Other civil rights requirements applicable to the States under the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964, among others.

E. Federal Public Notice and Approval Process (31 CFR 33.116 and 45 CFR 155.1316)

Consistent with section 1332 of the Affordable Care Act and the Secretaries' desire to implement a State waiver application process that promotes transparency, facilitates public involvement and input, and encourages sound decision-making at all levels of government, 31 CFR 33.116 and 45 CFR 155.1316 of the proposed regulations provide for a Federal public notice and comment period following a preliminary determination by the Secretaries that a State's application for a section 1332 waiver is complete. As required by section 1332 of the Affordable Care Act, the Federal notice and comment period is designed to ensure a meaningful level of public

input, while avoiding the imposition of requirements that are in addition to, or duplicative of, those imposed under the APA or that are unreasonable or unnecessarily burdensome for State compliance.

To facilitate public participation in the section 1332 waiver application process, the proposed regulations require the Secretary of HHS to provide the public with notice of a section 1332 waiver application that has been preliminarily determined to be complete, including any supplemental materials received from a State during the Federal public notice and comment period, as well as regular updates for the status of a State's section 1332 waiver application. In addition, the Secretary of HHS will provide the public with information relating to (A) where copies of the section 1332 waiver application are available for public review and comment; (B) how and where written comments may be submitted and reviewed by the public, and the timeframe during which comments may be submitted; and (C) any public comments received during the Federal public notice and comment period.

Following the conclusion of the Federal notice and comment period, but in no event later than 180 days following the preliminary determination by the Secretaries that a State's application for a section 1332 waiver is complete, the final decision of the Secretaries on a State's section 1332 waiver application will be issued by the Secretary of HHS.

F. Monitoring and Compliance (31 CFR 33.120 and 45 CFR 155.1320)

As section 1332 waivers are likely to a have a significant impact on individuals, States and the Federal government, the proposed regulations establish processes and methodologies to ensure that the Secretaries receive adequate and appropriate information regarding the effectiveness of section 1332 waivers (consistent with section 1332(a)(4)(B)(iv) of the Affordable Care Act).

Under 31 CFR 33.120(a) and 45 CFR 155.1320(a) of the proposed regulations, a State is required to comply with all applicable Federal laws, regulations, policy statements and Departmental guidance unless a law or regulation has specifically been waived. Further, the proposed regulations require a State to come into compliance with any changes in Federal law, regulation, or policy affecting section 1332 waivers within the timeframes specified in law, regulation, interpretive policy, or guidance, unless the provision being changed is expressly waived, and to comply with the terms and conditions of the agreement entered into between the Secretaries and the State to implement a section 1332 waiver, or the section 1332 waiver will be suspended or terminated in whole or in part by the Secretaries.

Under 31 CFR 33.120(b) and 45 CFR 155.1320(b) of the proposed regulations, as part of the terms and conditions of any section 1332 waiver, a State must conduct periodic reviews related to the implementation of the waiver. The Secretaries will review, and when appropriate investigate, documented complaints that a State is failing to materially comply with requirements specified in the terms and conditions of the section 1332 waiver. In addition, the Secretaries will share with the State any complaint that has been received, and notify the State of any applicable monitoring and compliance issues.

Under 31 CFR 33.120(c) and 45 CFR 155.1320(c) of the proposed regulations, to ensure continued public input after the initial 6 months of the waiver's implementation, and annually thereafter, States are required to hold a public forum at which members of the public have an opportunity to provide comments on the progress of the section 1332 waiver. The proposed regulation further requires States to include a summary of this forum to the Secretary of HHS as part of the quarterly and annual reporting requirements under 31 CFR 33.124 and 45 CFR 155.1324.

Under 31 CFR 33.120(c)(1) and 45 CFR 155.1320(c)(1) of the proposed regulations, States are required to publish the date, time, and location of the public forum in a prominent location on the State's public Web site at least 30 days prior to the date of the planned public forum.

Under 31 CFR 33.120(d) and 45 CFR 155.1320(d) of the proposed regulations, the Secretaries reserve the right to suspend or terminate a section 1332 waiver, in whole or in part, any time before the date of expiration, if the Secretaries determine that the State has materially failed to comply with the terms and conditions of the section 1332 waiver. In the event that all or a portion section 1332 waiver is terminated or suspended by the Secretaries, or if all or a portion of the section 1332 waiver is withdrawn, Federal funding is limited to normal closeout costs associated with an orderly termination of the section 1332 waiver, as described in 31 CFR 33.120(e) and 45 CFR 155.1320(e).

Under 31 CFR 33.120(f) and 45 CFR 155.1320(f) of the proposed regulations, in the event that the Secretaries undertake an independent evaluation of any component of the section 1332 waiver, the State must cooperate fully with the Secretaries or the independent evaluator selected by the Secretaries. This cooperation includes, but is not limited to, the submission of all necessary data and information to the Secretaries or the independent evaluator.

G. State Reporting Requirements (31 CFR 33.124 and 45 CFR 155.1324)

Section 1332 of the Affordable Care Act requires that the Secretaries provide for a procedure for the periodic submission of reports by a State concerning the implementation of the program under a section 1332 waiver.

In order for the Secretaries to effectively monitor the implementation of a waiver, the proposed regulations require a State to submit a quarterly progress report in accordance with the terms and conditions of the State's section 1332 waiver. States are also required to submit an annual report, as described in 31 CFR 33.124(b) and 45 CFR 155.1324(b), documenting the following:

- The progress of the section 1332 waiver;
- Data on compliance with section 1332(b)(1)(A) through (D) of the Affordable Care Act;
- A summary of the annual post-award public forum, including all public comments received regarding the progress of the section 1332 waiver and action taken in response to such concerns or comments; and
- Other information consistent with the State's approved terms and conditions.

Under 31 CFR 33.124(c) and 45 CFR 155.1324(c) of the proposed regulations, States are required to submit a draft annual report to the Secretary of Health and Human Services no later than 90 days after the end of each waiver year. Within 60 days of receipt of comments from the Secretary of Health and Human Services, a State is required to submit a final annual report for the waiver year to the Secretary of Health and Human Services. Finally, a State is required to publish the draft and final annual reports on the State's public Web site.

The Secretaries intend to issue future guidance under section 1332 regarding periodic reports.

H. Periodic Evaluation Requirements (31 CFR 33.128 and 45 CFR 155.1328)

Section 1332 of the Affordable Care Act requires that the Secretaries provide for a procedure for the periodic evaluation of section 1332 waivers by the Secretary or Secretaries with jurisdiction over the provisions for which the waiver was granted. These

proposed regulations require that each periodic evaluation shall include a review of all annual reports submitted by the State in accordance with 45 CFR 155.1324 and 31 CFR 33.124 that relate to the period of time covered by the evaluation.

As part of this proposed regulation, the Secretaries are soliciting public comments regarding specific components of the periodic evaluation of a section 1332 waiver. Potential components of a periodic evaluation could include, but not be limited to, the impact of the waiver on the following:

- Choice of health plans for individuals and employers;
- Stability of coverage for individuals and employers;
- Small businesses, individuals with pre-existing conditions, and the low-income population;
- The overall health care system in the State; and
- Other States and the Federal government.

The Secretaries intend to issue future guidance under section 1332 regarding periodic evaluations.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, the Departments are required to provide notice in the **Federal Register** and solicit public comment before a collection of information requirement is approved by the Office of Management and Budget (OMB). 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 the Departments solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of the Departments.
- The accuracy of the Departments' 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.

The Departments have no way to accurately quantify the burden until the provisions that section 1332 authorizes the Secretaries to waive pursuant to an application by a State take effect in 2014. The Departments are soliciting public comments on the annual number of waiver applications that the Departments may receive, and will reevaluate this issue in future guidance. With that said, the Departments have developed estimates of the burden associated with information collection requirements in this proposed regulation.

The Departments are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Application Procedures (31 CFR 33.108 and 45 CFR 155.1308)

31 CFR 33.108 and 45 CFR 155.1308 of the proposed regulations establish the application process for section 1332 waivers. A State's application for approval of a section 1332 waiver must be submitted to CMS as both printed and electronic documents. Paragraph (a)(2)(iv) of 31 CFR 33.108 and 45 CFR 155.1308 specify that applications for a section 1332 waiver will not be considered complete if they do not contain written evidence of compliance with the State public notice and comment process described in 31 CFR 33.112 and 45 CFR 155.1312, as well as the information specified in paragraph (a)(2)(iv)(C) and (D) of 31 CFR 33.108 and 45 CFR 155.1308.

The burden associated with the requirements in 31 CFR 33.108 and 45 CFR 155.1308 is the time and effort necessary for a State to develop and submit a complete application for a section 1332 waiver. The Departments estimate that it will take 200 hours for a State to develop and submit a complete section 1332 waiver application, at a total cost of $4,134.

B. ICRs Regarding State Public Notice Requirements (31 CFR 33.112 and 45 CFR 155.1312)

Paragraph (a)(1) of 31 CFR 33.112 and 45 CFR 155.1312 of the proposed regulations require a State to provide a public notice and comment period regarding applications for section 1332 waivers. 31 CFR 33.112 and 45 CFR 155.1312 specify that prior to submitting an application to HHS and Treasury for a section 1332 waiver, the State must provide a public notice and comment period sufficient to ensure a meaningful level of public input. The public notice must address the information requirements listed in paragraphs (b)(1) through (4) of 31 CFR 33.112 and 45 CFR 155.1312.

The burden estimate associated with this requirement is the time and effort necessary to develop and publish a public notice that complies with the aforementioned information requirements. The Departments estimate that each State submitting an application for a section 1332 waiver will require 40 hours to comply with the requirements in this section, at a total cost of $827 per State.

Paragraph (c) of 31 CFR 33.112 and 45 CFR 155.1312 specify that after issuing the public notice and prior to submitting an application for a section 1332 waiver, a State must conduct public hearings regarding the State's waiver application. The minimum burden associated with this requirement is the time and effort necessary for a State to conduct public hearings prior to submitting an application for a section 1332 waiver. While this requirement is subject to the PRA, the Departments believe the associated burden is exempt under 5 CFR 1320.3(h)(4). Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment are not subject to the PRA.

Paragraph (a)(2) of 31 CFR 33.112 and 45 CFR 155.1312 require States with one or more federally-recognized Indian tribes to consult with such tribes before submitting a section 1332 waiver application. Paragraph (a)(2)(iv)(B) of 31 CFR 33.108 and 45 CFR 155.1308 explain that documentation of the State's public notice, which incorporates this consultation, must be included in the waiver application.

The burden associated with these requirements is both the time and effort necessary for a State to conduct its tribal consultations and the time and effort necessary to notify CMS of the State's compliance with paragraph (a)(2)(iv)(B) of 31 CFR 33.108 and 45 CFR 155.1308. The Departments estimate that each State submitting an application for a section 1332 waiver will require 40 hours to both conduct its tribal consultations and to submit the aforementioned evidence to CMS, at a total cost of $827.

C. ICRs Regarding Monitoring and Compliance (31 CFR 33.120 and 45 CFR 155.1320)

31 CFR 33.120 and 45 CFR 155.1320 of the proposed regulations require States to periodically perform reviews of the implementation of the section 1332 waiver. The Departments estimate that it will take a State 40 hours annually to periodically review the waiver's implementation, at a total cost of $827.

Paragraph (c) of 31 CFR 33.120 and 45 CFR 155.1320 of the proposed

regulations further specifies that at least 6 months after the implementation date of the waiver and annually thereafter, the State must hold a public forum to solicit comments on the progress of a section 1332 waiver. As proposed in paragraph (c)(1) of 31 CFR 33.120 and 45 CFR 155.1320, the State must publish the date, time, and location of the public forum in a prominent location on the State's public Web site, at least 30 days prior to the date of the planned public forum.

The burden associated with these provisions includes the time and effort necessary to conduct the public meeting and the time and effort necessary for a State to publish the date, time, and location of the public forum in a prominent location on the State's public Web site, at least 30 days prior to the date of the planned public forum. While these requirements are subject to the PRA, the Departments believe the associated burden is exempt from the PRA. As discussed previously in this collection, facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment are not subject to the PRA. Therefore, the burden associated with the annual public hearing requirement is exempt. Similarly, the Departments believe the time and effort necessary for a State to publish the date, time, and location of the public forum in a prominent location on the State's public Web site is a burden that would be incurred in the course of usual and customary State business practices and is therefore exempt from the PRA under 5 CFR 1320.3(b)(3).

D. ICRs Regarding State Reporting Requirements (31 CFR 33.124 and 45 CFR 155.1324)

Paragraph (a) of 31 CFR 33.124 and 45 CFR 155.1324 of the proposed regulations requires States to submit quarterly reports to CMS in accordance with the terms and conditions of a State's approved section 1332 waiver. The burden associated with this reporting requirement is the time and effort necessary to submit quarterly reports to CMS. The Departments estimate that it will take 10 hours per quarter for each State to comply with this reporting requirement, for a total of 40 hours per year, at a total annual cost of $827.

Paragraph (b) of 31 CFR 33.124 and 45 CFR 155.1324 of the proposed regulations requires States to submit annual reports to CMS documenting the information listed in paragraph (b)(1) through (4) of 31 CFR 33.124 and 45 CFR 155.1324. As part of the submission process, paragraph (c) of 31 CFR 33.124 and 45 CFR 155.1324 requires States to submit draft annual reports to CMS no later than 90 days after the end of each waiver year, or as specified in the State's terms and conditions. The burden associated with this reporting requirement is the time and effort necessary to submit draft annual reports to CMS. The Departments estimate that it will take 24 hours for each State to comply with this reporting requirement, at a total cost of $496.

Paragraph (c)(1) of 31 CFR 33.124 and 45 CFR 155.1324 of the proposed regulations specifies that within 60 days of receipt of comments from CMS, the State must submit to CMS the final annual report for the waiver year. While this requirement is subject to the PRA, the Departments believe the associated burden is exempt under 5 CFR 1320.3(h)(9). Facts or opinions obtained or solicited through non-standardized follow-up questions designed to clarify responses to approved collections of information are not subject to the PRA.

Paragraph (c)(2) of 31 CFR 33.124 and 45 CFR 155.1324 of the proposed regulations specify that the draft and final annual reports must be published on the State's public Web site. The burden associated with this is the time and effort required for a State to post the aforementioned information on the State's public Web site. The Departments estimate that it will take 2 hours for each State to comply with this requirement, at a total cost of $42.

E. ICRs Regarding Periodic Evaluation Requirements (31 CFR 33.128 and 45 CFR 155.1328)

31 CFR 33.128 and 45 CFR 155.1328 of the proposed regulations specify that the Secretary of Health and Human Services and the Secretary of the Treasury shall periodically evaluate the implementation of section 1332 waivers. One potential option for satisfying this requirement is for a State to design and conduct an evaluation, with Federal approval of the evaluation design and interim and final reports. The burden associated with this approach is the time and effort necessary to design and execute an evaluation for a section 1332 waiver. The Departments estimate that it will take a State 80 hours to develop an evaluation design, 80 hours to develop and submit an interim evaluation report, and 36 hours to publish CMS-approved evaluations on a State's public Web site. The Departments estimate that it will take a State 196 hours over the course of a 5-year waiver term to complete these activities at a total cost of $4,051.

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING AND REPORTING 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 ($)	Total cost ($)
31 CFR 33.108 and 45 CFR 155.1308	0938–New	X	1	200	n/a	20.67	n/a	0	n/a
Paragraph (a)(1) of 31 CFR 33.112 and 45 CFR 155.1312.	0938–New	X	1	40	n/a	20.67	n/a	0	n/a
Paragraph (a)(2) of 31 CFR 33.112 and 45 CFR 155.1312.	0938–New	X	1	40	n/a	20.67	n/a	0	n/a
Paragraph (b)(1) of 31 CFR 33.120 and 45 CFR 155.1320.	0938–New	X	1	40	n/a	20.67	n/a	0	n/a
Paragraph (a) of 31 CFR 33.124 and 45 CFR 155.1324.	0938–New	X	4	10	n/a	20.67	n/a	0	n/a
Paragraph (b) of 31 CFR 33.124 and 45 CFR 155.1324.	0938–New	X	1	24	n/a	20.67	n/a	0	n/a
Paragraph (c)(2) of 31 CFR 33.124 and 45 CFR 155.1324.	0938–New	X	1	2	n/a	20.67	n/a	0	n/a
31 CFR 33.128 and 45 CFR 155.1328	0938–New	X	1	196	n/a	20.67	n/a	0	n/a
Total	.....	X	10	.....	n/a	.....	n/a	0	n/a

If you comment on these information collection and recordkeeping requirements, 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 Officer [CMS–9987–P]; Fax: (202) 395–6974; or E-mail: *OIRA_submission@omb.eop.gov.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a control number assigned by OMB.

IV. Response to Comments

Because of the large number of public comments the Departments normally receive on **Federal Register** documents, the Departments are not able to acknowledge or respond to them individually. The Departments will consider all comments the Departments receive by the date and time specified in the **DATES** section of this preamble, and, when the Departments proceed with a subsequent document, the Departments will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

The Departments have examined the impacts of this proposed rule as required by Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The RFA requires agencies to analyze options for regulatory relief for small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business and having revenues of less than $7 million to $34.5 million in any 1 year. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432, November 17, 2000.) Individuals and States are not included in the definition of a small entity. The Departments are not preparing an analysis for the RFA because the Departments have determined, and the Secretaries certify, that this proposed rule will not have a significant impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. Because this rule does not mandate State participation in section 1332 waivers, there is no obligation for the State to make any change to their existing programs. As a result, there is no mandate for the State. Therefore, the Departments estimate this rule will not mandate expenditures in the threshold amount of $136 million in any 1 year.

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. Since this regulation would not impose costs on State or local governments, the requirements of Executive Order 13132 are not applicable. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

31 CFR Part 33

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 155

Health care, Health insurance, Reporting and recordkeeping requirements.

Department of the Treasury

31 CFR Subtitle A

For the reasons set forth in the preamble, the Department of the Treasury proposes to amend 31 CFR subtitle A to add new part 33 to read as follows:

PART 33—WAIVERS FOR STATE INNOVATION

Sec.

33.100 Basis and purpose.
33.102 Coordinated waiver process.
33.104 Definitions.
33.108 Application procedures.
33.112 State public notice requirements.
33.116 Federal public notice and approval process.
33.120 Monitoring and compliance.
33.124 State reporting requirements.
33.128 Periodic evaluation requirements.

Authority: Sec. 1332, Pub. L. 111–148, 124 Stat. 119

§ 33.100 Basis and purpose.

(a) *Statutory basis.* This part implements provisions of section 1332 of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148, relating to Waivers for State Innovation, which the Secretary may authorize for plan years beginning on or after January 1, 2017. Section 1332 of the Affordable Care Act requires the Secretary to issue regulations that provide for all of the following:

(1) A process for public notice and comment at the State level, including public hearings, sufficient to ensure a meaningful level of public input.

(2) A process for the submission of an application that ensures the disclosure of all of the following:

(i) The provisions of law that the State involved seeks to waive.

(ii) The specific plans of the State to ensure that the waiver will meet all requirements specified in section 1332 of the Affordable Care Act.

(3) A process for the provision of public notice and comment after a waiver application is received by the Secretary of Health and Human Services, that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedures Act, or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance.

(4) A process for the submission of reports to the Secretary by a State

relating to the implementation of a waiver.

(5) A process for the periodic evaluation by the Secretary of programs under waivers.

(b) *Purpose.* This part sets forth certain procedural requirements for Waivers for State Innovation under section 1332 of the Affordable Care Act.

§ 33.102 Coordinated waiver process.

(a) *Coordination with applications for waivers under other Federal laws.* A State may submit a single application to the Secretary of Health and Human Services for a waiver under section 1332 of the Affordable Care Act and a waiver under one or more of the existing waiver processes applicable under titles XVIII, XIX, and XXI of the Social Security Act, or under any other Federal law relating to the provision of health care items or services, provided that such application is consistent with the procedures described in this part, the procedures for section 1115 demonstrations, if applicable, and the procedures under any other applicable Federal law under which the State seeks a waiver.

(b) *Coordinated process for section 1332 waivers.* A State seeking a section 1332 waiver must submit a waiver application to the Secretary of Health and Human Services. Any application submitted to the Secretary of Health and Human Services that requests to waive sections 36B, 4980H, and 5000A of the Internal Revenue Code, in accordance with section 1332(a)(2)(D) of the Affordable Care Act, shall upon receipt be transmitted by the Secretary of Health and Human Services to the Secretary to be reviewed in accordance with 31 CFR part 33.

§ 33.104 Definitions.

For the purposes of this part:

Complete application means an application that has been submitted and for which the Secretary and the Secretary of Health and Human Services have made a preliminary determination that it includes all required information and satisfies all requirements that are described in § 33.108(a)(2)(iv).

Public notice means a notice issued by a government agency or legislative body that contains sufficient detail to notify the public at large of a proposed action consistent with § 33.112.

Section 1332 waiver means a Waiver for State Innovation under section 1332 of the Affordable Care Act.

§ 33.108 Application procedures.

(a) *Initial waiver applications*—(1) *Acceptable formats for applications.* (i) Applications for initial approval of a section 1332 waiver shall be submitted in both printed and electronic formats to the Secretary of Health and Human Services.

(ii) [Reserved]

(2) *Guidelines for applications.* (i) Each application for a section 1332 waiver will be subject to a preliminary review by the Secretary and the Secretary of Health and Human Services, who will make a preliminary determination that the application is complete. A submitted application will not be deemed received until the Secretary and the Secretary of Health and Human Services have made the preliminary determination that the application is complete.

(A) The Secretary and the Secretary of Health and Human Services will complete the preliminary review of the application within 45 days after it is submitted.

(B) If the Secretary and the Secretary of Health and Human Services determine that the application is not complete, the Secretary of Health and Human Services will send the State a written notice of the elements missing from the application.

(C) The preliminary determination that an application is complete does not preclude a finding during the 180-day Federal decision-making period that a necessary element of the application is missing or insufficient.

(ii) Upon making the preliminary determination that an application is complete, as defined in this part, the Secretary of Health and Human Services will send the State a written notice informing the State that the Secretary and the Secretary of Health and Human Services have made such a preliminary determination. That date will also mark the beginning of the Federal public notice process and the 180-day Federal decision-making period.

(iii) Upon receipt of a complete application for an initial section 1332 waiver, the Secretary of Health and Human Services will—

(A) Make available to the public the application, and all related State submissions, including all supplemental information received from the State following the receipt of a complete application for a section 1332 waiver.

(B) Indicate the status of the application.

(iv) An application for initial approval of a section 1332 waiver will not be considered complete unless the application meets all of the following conditions:

(A) Complies with paragraph (a) of this section.

(B) Provides written evidence of the State's compliance with the public notice requirements set forth in § 33.112.

(C) Provides all of the following:

(*1*) A comprehensive description of the State legislation and program to implement a plan meeting the requirements for a waiver under section 1332;

(*2*) A copy of the enacted State legislation authorizing such waiver request, as required under section 1332(a)(1)(C) of the Affordable Care Act;

(*3*) A list of the provisions of law that the State seeks to waive, including a brief description of the reason for the specific requests; and

(*4*) The analyses, actuarial certifications, data, assumptions, analysis, targets and other information set forth in paragraph (a)(2)(iv)(D) of this section sufficient to provide the Secretary and the Secretary of Health and Human Services with the necessary data to determine that the State's proposed waiver:

(*i*) Will, as required under section 1332(b)(1)(A) of the Affordable Care Act (the comprehensive coverage requirement), provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) of the Affordable Care Act and offered through Exchanges established under the Affordable Care Act as certified by the Office of the Actuary of the Centers for Medicare and Medicaid Services based on sufficient data from the State and from comparable States about their experience with programs created by the Affordable Care Act and the provisions of the Affordable Care Act that the State seeks to waive;

(*ii*) Will, as required under section 1332(b)(1)(B) of the Affordable Care Act (the affordability requirement), provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of Title I of the Affordable Care Act would provide;

(*iii*) Will, as required under section 1332(b)(1)(C) of the Affordable Care Act (the scope of coverage requirement), provide coverage to at least a comparable number of its residents as the provisions of Title I of the Affordable Care Act would provide; and

(*iv*) Will not, as prohibited under section 1332(b)(1)(D) of the Affordable Care Act (the Federal deficit requirement), increase the Federal deficit.

(D) Contains the following supporting information:

(*1*) *Actuarial analyses and actuarial certifications.* Actuarial analyses and actuarial certifications to support the State's estimates that the proposed waiver will comply with the

comprehensive coverage requirement, the affordability requirement, and the scope of coverage requirement.

(*2*) *Economic analyses.* Economic analyses to support the State's estimates that the proposed waiver will comply with the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement and the Federal deficit requirement, including:

(*i*) A detailed 10-year budget plan that is deficit neutral to the Federal government, as prescribed by section 1332(a)(1)(B)(ii) of the Affordable Care Act, and includes all costs under the waiver, including administrative costs and other costs to the Federal government, if applicable; and

(*ii*) A detailed analysis regarding the estimated impact of the waiver on health insurance coverage in the State.

(*3*) *Data and assumptions.* The data and assumptions used to demonstrate that the State's proposed waiver is in compliance with the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement and the Federal deficit requirement, including:

(*i*) Information on the age, income, health expenses and current health insurance status of the relevant State population; the number of employers by number of employees and whether the employer offers insurance; cross-tabulations of these variables; and an explanation of data sources and quality; and

(*ii*) An explanation of the key assumptions used to develop the estimates of the effect of the waiver on coverage and the Federal budget, such as individual and employer participation rates, behavioral changes, premium and price effects, and other relevant factors.

(*4*) *Additional information.* Additional information supporting the State's proposed waiver, including:

(*i*) An explanation as to whether the waiver increases or decreases the administrative burden on individuals, insurers, and employers, and if so, how and why;

(*ii*) An explanation of how the waiver will affect the implementation of the provisions of the Affordable Care Act which the State is not requesting to waive in the State and at the Federal level;

(*iii*) An explanation of how the waiver will affect residents who need to obtain health care services out-of-State, as well as the States in which such residents may seek such services;

(*iv*) If applicable, an explanation as to how the State will provide the Federal government with all information necessary to administer the waiver at the Federal level; and

(*v*) An explanation of how the State's proposal will address potential individual, employer, insurer, or provider compliance, waste, fraud and abuse within the State or in other States.

(*5*) *Reporting targets.* Quarterly, annual, and cumulative targets for the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement, and the Federal deficit requirement.

(*6*) *Other information.* Other information consistent with guidance provided by the Secretary and the Secretary of Health and Human Services.

(b) *Additional supporting information.* (1) During the Federal review process, the Secretary may request additional supporting information from the State as needed to address public comments or to address issues that arise in reviewing the application.

(2) Requests for additional information, and responses to such requests, will be made available to the public in the same manner as information described in § 33.116(b).

§ 33.112 State public notice requirements.

(a) *General.* (1) Prior to submitting an application for a new section 1332 waiver to the Secretary of Health and Human Services for review and consideration, a State must provide a public notice and comment period sufficient to ensure a meaningful level of public input for the application for a section 1332 waiver.

(2) Such public notice and comment period shall include, for a State with one or more federally-recognized Indian tribes within its borders, a separate process for meaningful consultation with such tribes.

(b) *Public notice and comment period.* The State shall make available at the beginning of the public notice and comment period, through its Web site or other effective means of communication, and shall update as appropriate, a public notice that includes all of the following:

(1) A comprehensive description of the application for a section 1332 waiver to be submitted to the Secretary of Health and Human Services including information and assurances related to all statutory requirements and other information consistent with guidance provided by the Secretary and the Secretary of Health and Human Services.

(2) Information relating to where copies of the application for a section 1332 waiver are available for public review and comment.

(3) Information relating to how and where written comments may be submitted and reviewed by the public, and the timeframe during which comments will be accepted.

(4) The location, date, and time of public hearings that will be convened by the State to seek public input on the application for a section 1332 waiver.

(c) *Public hearings.* (1) After issuing the public notice and prior to submitting an application for a new section 1332 waiver, a State must conduct public hearings regarding the State's application.

(2) Such public hearings shall provide an interested party the opportunity to learn about and comment on the contents of the application for a section 1332 waiver.

(d) *Submission of initial application.* After the State public notice and comment period has concluded, the State may submit an application to the Secretary of Health and Human Services for an initial waiver in accordance with the requirements set forth in § 33.108.

§ 33.116 Federal public notice and approval process.

(a) *General.* The Federal public notice and approval process begins on the first business day after the Secretary and the Secretary of Health and Human Services determine that all elements for a complete application were documented and submitted to the Secretary of Health and Human Services.

(b) *Public notice and comment period.* (1) Following a determination that a State's application for a section 1332 waiver is complete, the Secretary and the Secretary of Health and Human Services will provide for a public notice and comment period that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedures Act, or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance.

(2) At the beginning of the Federal notice and comment period, the Secretary of Health and Human Services will make available through its Web site and otherwise, and shall update as appropriate, public notice that includes all of the following:

(i) The complete application for a section 1332 waiver, updates for the status of the State's application, and any supplemental materials received from the State prior to and during the Federal public notice and comment period.

(ii) Information relating to where copies of the application for a section 1332 waiver are available for public review and comment.

(iii) Information relating to how and where written comments may be submitted and reviewed by the public, and the timeframe during which comments will be accepted.

(iv) Any public comments received during the Federal public notice and comment period.

(c) *Approval of a section 1332 waiver application.* The final decision of the Secretary and the Secretary of Health and Human Services on a State application for a section 1332 waiver will be issued by the Secretary of Health and Human Services no later than 180 days after the determination by the Secretary and the Secretary of Health and Human Services that a complete application was received in accordance with § 33.108.

§ 33.120 Monitoring and compliance.

(a) *General.* (1) Following the issuance of a final decision to approve a section 1332 waiver by the Secretary and the Secretary of Health and Human Services, a State must comply with all applicable Federal laws, regulations, interpretive policy statements and interpretive guidance unless expressly waived. A State must, within the timeframes specified in law, regulation, policy, or guidance, come into compliance with any changes in Federal law, regulation, or policy affecting section 1332 waivers, unless the provision being changed is expressly waived.

(2) A State must comply with the terms and conditions of the agreement between the Secretary, the Secretary of Health and Human Services, and the State to implement a section 1332 waiver.

(b) *Implementation reviews.* (1) The terms and conditions of an approved section 1332 waiver will provide that the State will perform periodic reviews of the implementation of the section 1332 waiver.

(2) The Secretary and the Secretary of Health and Human Services will review documented complaints that a State is failing to comply with requirements specified in the terms and conditions of any approved section 1332 waiver.

(3) The Secretary and the Secretary of Health and Human Services will promptly share with a State any complaint that the Secretary and the Secretary of Health and Human Services has received and will also provide notification of any applicable monitoring and compliance issues.

(c) *Post award.* Within 6 months after the implementation date of a section 1332 waiver and annually thereafter, a State must hold a public forum to solicit comments on the progress of a section 1332 waiver. The State must hold the public forum at which members of the public have an opportunity to provide comments and must provide a summary of the forum to the Secretary of Health and Human Services as part of the quarterly report specified in § 33.124(a) that is associated with the quarter in which the forum was held, as well as in the annual report specified in § 33.124(b) that is associated with the year in which the forum was held.

(1) The State must publish the date, time, and location of the public forum in a prominent location on the State's public Web site, at least 30 days prior to the date of the planned public forum.

(2) [Reserved]

(d) *Terminations and suspensions.* The Secretary and the Secretary of Health and Human Services reserve the right to suspend or terminate a section 1332 waiver in whole or in part, at any time before the date of expiration, whenever the Secretaries determine that a State has materially failed to comply with the terms of a section 1332 waiver.

(e) *Closeout costs.* If all or part of a section 1332 waiver is terminated or suspended, or if a portion of a section 1332 waiver is withdrawn, Federal funding is limited to normal closeout costs associated with an orderly termination, suspension, or withdrawal, including service costs during any approved transition period, and administrative costs of disenrolling participants.

(f) *Federal evaluators.* (1) A State must fully cooperate with the Secretary, the Secretary of Health and Human Services, or an independent evaluator selected by the Secretary or the Secretary of Health and Human Services to undertake an independent evaluation of any component of a section 1332 waiver.

(2) As part of this required cooperation, a State must submit all requested data and information to the Secretary, the Secretary of Health and Human Services, or the independent evaluator.

§ 33.124 State reporting requirements.

(a) *Quarterly reports.* A State must submit quarterly reports to the Secretary of Health and Human Services in accordance with the terms and conditions of the State's section 1332 waiver. These quarterly reports must include, but are not limited to, reports of any ongoing operational challenges and plans for and results of associated corrective actions.

(b) *Annual reports.* A State must submit an annual report to the Secretary of Health and Human Services documenting all of the following:

(1) The progress of the section 1332 waiver.

(2) Data on compliance with section 1332(b)(1)(A) through (D) of the Affordable Care Act.

(3) A summary of the annual post-award public forum, held in accordance with § 33.120(c), including all public comments received at such forum regarding the progress of the section 1332 waiver and action taken in response to such concerns or comments.

(4) Other information consistent the State's approved terms and conditions.

(c) *Submitting and publishing annual reports.* A State must submit a draft annual report to the Secretary of Health and Human Services no later than 90 days after the end of each waiver year, or as specified in the waiver's terms and conditions.

(1) Within 60 days of receipt of comments from the Secretary of Health and Human Services, a State must submit to the Secretary of Health and Human Services a final annual report for the waiver year.

(2) The draft and final annual reports are to be published on a State's public Web site within 30 days of submission and approval to the Secretary of Health and Human Services, respectively.

§ 33.128 Periodic evaluation requirements.

(a) *General.* (1) The Secretary and the Secretary of Health and Human Services shall periodically evaluate the implementation of a program under a section 1332 waiver consistent with guidance published by the Secretary and the Secretary of Health and Human Services and any terms and conditions governing the section 1332 waiver.

(2) Each periodic evaluation must include a review of the annual report or reports submitted by the State in accordance with § 33.124 that relate to the period of time covered by the evaluation.

Department of Health and Human Services

45 CFR Subtitle A

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, subchapter B to add new Part 155 to read as follows:

PART 155—WAIVERS FOR STATE INNOVATION

Subparts A Through M [Reserved]

Subpart N—State Flexibility

Sec.

155.1300 Basis and purpose.
155.1302 Coordinated waiver process.
155.1304 Definitions.
155.1308 Application procedures.
155.1312 State public notice requirements.
155.1316 Federal public notice and approval process.
155.1320 Monitoring and compliance.
155.1324 State reporting requirements.
155.1328 Periodic evaluation requirements.

Authority: Sec. 1332, Pub. L. 111–148, 124 Stat. 119.

Subparts A Through M [Reserved]

Subpart N—State Flexibility

§ 155.1300 Basis and purpose.

(a) *Statutory basis.* This subpart implements provisions of section 1332 of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148, relating to Waivers for State Innovation, which the Secretary may authorize for plan years beginning on or after January 1, 2017. Section 1332 of the Affordable Care Act requires the Secretary to issue regulations that provide for all of the following:

(1) A process for public notice and comment at the State level, including public hearings, sufficient to ensure a meaningful level of public input.

(2) A process for the submission of an application that ensures the disclosure of all of the following:

(i) The provisions of law that the State involved seeks to waive.

(ii) The specific plans of the State to ensure that the waiver will meet all requirements specified in section 1332.

(3) A process for the provision of public notice and comment after a waiver application is received by the Secretary, that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedures Act, or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance.

(4) A process for the submission of reports to the Secretary by a State relating to the implementation of a waiver.

(5) A process for the periodic evaluation by the Secretary of programs under waivers.

(b) *Purpose.* This subpart sets forth certain procedural requirements for Waivers for State Innovation under section 1332 of the Affordable Care Act.

§ 155.1302 Coordinated waiver process.

(a) *Coordination with applications for waivers under other Federal laws.* A State may submit a single application to the Secretary for a waiver under section 1332 of the Affordable Care Act and a waiver under one or more of the existing waiver processes applicable under titles XVIII, XIX, and XXI of the Social Security Act, or under any other Federal law relating to the provision of health care items or services, provided that such application is consistent with the procedures described in this part, the procedures for section 1115 demonstrations, if applicable, and the procedures under any other applicable Federal law under which the State seeks a waiver.

(b) *Coordinated process for section 1332 waivers.* A State seeking a section 1332 waiver must submit a waiver application to the Secretary. Any application submitted to the Secretary that requests to waive sections 36B, 4980H, and 5000A of the Internal Revenue Code, in accordance with section 1332(a)(2)(D) of the Affordable Care Act, shall upon receipt be transmitted by the Secretary to the Secretary of the Treasury to be reviewed in accordance with 31 CFR part 33.

§ 155.1304 Definitions.

For the purposes of this subpart:

Complete application means an application that has been submitted and for which the Secretary and the Secretary of the Treasury have made a preliminary determination that it includes all required information and satisfies all requirements that are described in § 155.1308(a)(2)(iv).

Public notice means a notice issued by a government agency or legislative body that contains sufficient detail to notify the public at large of a proposed action consistent with § 155.1312.

Section 1332 waiver means a Waiver for State Innovation under section 1332 of the Affordable Care Act.

§ 155.1308 Application procedures.

(a) *Initial waiver applications*—(1) *Acceptable formats for applications.* (i) Applications for initial approval of a section 1332 waiver shall be submitted in both printed and electronic formats to the Secretary.

(ii) [Reserved]

(2) *Guidelines for applications.* (i) Each application for a section 1332 waiver will be subject to a preliminary review by the Secretary and the Secretary of the Treasury will make a preliminary determination that the application is complete. A submitted application will not be deemed received until the Secretary and the Secretary of the Treasury have made the preliminary determination that the application is complete.

(A) The Secretary and the Secretary of the Treasury will complete the preliminary review of the application within 45 days after it is submitted.

(B) If the Secretary and the Secretary of the Treasury determine that the application is not complete, the Secretary will send the State a written notice of the elements missing from the application.

(C) The preliminary determination that an application is complete does not preclude a finding during the 180-day Federal decision-making period that a necessary element of the application is missing or insufficient.

(ii) Upon making the preliminary determination that an application is complete, as defined in this part, the Secretary will send the State a written notice informing the State that the Secretary and the Secretary of the Treasury have made such a preliminary determination. That date will also mark the beginning of the Federal public notice process and the 180-day Federal decision-making period.

(iii) Upon receipt of a complete application for an initial section 1332 waiver, the Secretary will—

(A) Make available to the public the application, and all related State submissions, including all supplemental information received from the State following the receipt of a complete application for a section 1332 waiver.

(B) Indicate the status of the application.

(iv) An application for initial approval of a section 1332 waiver will not be considered complete unless the application meets all of the following conditions:

(A) Complies with paragraph (a) of this section.

(B) Provides written evidence of the State's compliance with the public notice requirements set forth in § 155.1312.

(C) Provides all of the following:

(*1*) A comprehensive description of the State legislation and program to implement a plan meeting the requirements for a waiver under section 1332;

(*2*) A copy of the enacted State legislation authorizing such waiver request, as required under section 1332(a)(1)(C) of the Affordable Care Act;

(*3*) A list of the provisions of law that the State seeks to waive including a brief description of the reason for the specific requests; and

(*4*) The analyses, actuarial certifications, data, assumptions, analysis, targets and other information

set forth in paragraph (a)(2)(iv)(D) of this section sufficient to provide the Secretary and the Secretary of the Treasury with the necessary data to determine that the State's proposed waiver:

(*i*) Will, as required under section 1332(b)(1)(A) of the Affordable Care Act (the comprehensive coverage requirement), provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) of the Affordable Care Act and offered through Exchanges established under the Affordable Care Act as certified by the Office of the Actuary of the Centers for Medicare and Medicaid Services based on sufficient data from the State and from comparable States about their experience with programs created by the Affordable Care Act and the provisions of the Affordable Care Act that the State seeks to waive;

(*ii*) Will, as required under section 1332(b)(1)(B) of the Affordable Care Act (the affordability requirement), provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of Title I of the Affordable Care Act would provide;

(*iii*) Will, as required under section 1332(b)(1)(C) of the Affordable Care Act (the scope of coverage requirement), provide coverage to at least a comparable number of its residents as the provisions of Title I of the Affordable Care Act would provide; and

(*iv*) Will not, as prohibited under section 1332(b)(1)(D) of the Affordable Care Act (the Federal deficit requirement), increase the Federal deficit.

(D) Contains the following supporting information:

(*1*) *Actuarial analyses and actuarial certifications.* Actuarial analyses and actuarial certifications to support the State's estimates that the proposed waiver will comply with the comprehensive coverage requirement, the affordability requirement, and the scope of coverage requirement;

(*2*) *Economic analyses.* Economic analyses to support the State's estimates that the proposed waiver will comply with the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement and the Federal deficit requirement, including:

(*i*) A detailed 10-year budget plan that is deficit neutral to the Federal government, as prescribed by section 1332(a)(1)(B)(ii) of the Affordable Care Act, and includes all costs under the waiver, including administrative costs and other costs to the Federal government, if applicable; and

(*ii*) A detailed analysis regarding the estimated impact of the waiver on health insurance coverage in the State.

(*3*) *Data and assumptions.* The data and assumptions used to demonstrate that the State's proposed waiver is in compliance with the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement and the Federal deficit requirement, including:

(*i*) Information on the age, income, health expenses and current health insurance status of the relevant State population; the number of employers by number of employees and whether the employer offers insurance; cross-tabulations of these variables; and an explanation of data sources and quality; and

(*ii*) An explanation of the key assumptions used to develop the estimates of the effect of the waiver on coverage and the Federal budget, such as individual and employer participation rates, behavioral changes, premium and price effects, and other relevant factors.

(*4*) *Additional information.* Additional information supporting the State's proposed waiver, including:

(*i*) An explanation as to whether the waiver increases or decreases the administrative burden on individuals, insurers, and employers, and if so, how and why;

(*ii*) An explanation of how the waiver will affect the implementation of the provisions of the Affordable Care Act which the State is not requesting to waive in the State and at the Federal level;

(*iii*) An explanation of how the waiver will affect residents who need to obtain health care services out-of-State, as well as the States in which such residents may seek such services;

(*iv*) If applicable, an explanation as to how the State will provide the Federal government with all information necessary to administer the waiver at the Federal level; and

(*v*) An explanation of how the State's proposal will address potential individual, employer, insurer, or provider compliance, waste, fraud and abuse within the State or in other States.

(*5*) *Reporting targets.* Quarterly, annual, and cumulative targets for the comprehensive coverage requirement, the affordability requirement, the scope of coverage requirement and the Federal deficit requirement.

(*6*) *Other information.* Other information consistent with guidance provided by the Secretary and the Secretary of the Treasury.

(b) *Additional supporting information.* (1) During the Federal review process, the Secretary may request additional supporting information from the State as needed to address public comments or to address issues that arise in reviewing the application.

(2) Requests for additional information, and responses to such requests, will be made available to the public in the same manner as information described in § 155.1316(b).

§ 155.1312 State public notice requirements.

(a) *General.* (1) Prior to submitting an application for a new section 1332 waiver to the Secretary for review and consideration, a State must provide a public notice and comment period sufficient to ensure a meaningful level of public input for the application for a section 1332 waiver.

(2) Such public notice and comment period shall include, for a State with one or more Federally-recognized Indian tribes within its borders, a separate process for meaningful consultation with such tribes.

(b) *Public notice and comment period.* The State shall make available at the beginning of the public notice and comment period, through its Web site or other effective means of communication, and shall update as appropriate, a public notice that includes all of the following:

(1) A comprehensive description of the application for a section 1332 waiver to be submitted to the Secretary including information and assurances related to all statutory requirements and other information consistent with guidance provided by the Secretary and the Secretary of the Treasury.

(2) Information relating to where copies of the application for a section 1332 waiver are available for public review and comment.

(3) Information relating to how and where written comments may be submitted and reviewed by the public, and the timeframe during which comments will be accepted.

(4) The location, date, and time of public hearings that will be convened by the State to seek public input on the application for a section 1332 waiver.

(c) *Public hearings.* (1) After issuing the public notice and prior to submitting an application for a new section 1332 waiver, a State must conduct public hearings regarding the State's application.

(2) Such public hearings shall provide an interested party the opportunity to learn about and comment on the contents of the application for a section 1332 waiver.

(d) *Submission of initial application.* After the State public notice and comment period has concluded, the State may submit an application to the Secretary for an initial waiver in accordance with the requirements set forth in § 155.1308.

§ 155.1316 Federal public notice and approval process.

(a) *General.* The Federal public notice and approval process begins on the first business day after the Secretary and the Secretary of the Treasury determine that all elements for a complete application were documented and submitted to the Secretary.

(b) *Public notice and comment period.* (1) Following a determination that a State's application for a section 1332 waiver is complete, the Secretary and the Secretary of the Treasury will provide for a public notice and comment period that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedures Act, or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance.

(2) At the beginning of the Federal notice and comment period, the Secretary will make available through its Web site and otherwise, and shall update as appropriate, public notice that includes all of the following:

(i) The complete application for a section 1332 waiver, updates for the status of the State's application, and any supplemental materials received from the State prior to and during the Federal public notice and comment period.

(ii) Information relating to where copies of the application for a section 1332 waiver are available for public review and comment.

(iii) Information relating to how and where written comments may be submitted and reviewed by the public, and the timeframe during which comments will be accepted.

(iv) Any public comments received during the Federal public notice and comment period.

(c) *Approval of a section 1332 waiver application.* The final decision of the Secretary and the Secretary of the Treasury on a State application for a section 1332 waiver will be issued by the Secretary no later than 180 days after the determination by the Secretary and the Secretary of the Treasury that a complete application was received in accordance with § 155.1308.

§ 155.1320 Monitoring and compliance.

(a) *General.* (1) Following the issuance of a final decision to approve a section 1332 waiver by the Secretary and the Secretary of the Treasury, a State must comply with all applicable Federal laws, regulations, interpretive policy statements and interpretive guidance unless expressly waived. A State must, within the timeframes specified in law, regulation, policy or guidance, come into compliance with any changes in Federal law, regulation, or policy affecting section 1332 waivers, unless the provision being changed is expressly waived.

(2) A State must comply with the terms and conditions of the agreement between the Secretary, the Secretary of the Treasury, and the State to implement a section 1332 waiver.

(b) *Implementation reviews.* (1) The terms and conditions of an approved section 1332 waiver will provide that the State will perform periodic reviews of the implementation of the section 1332 waiver.

(2) The Secretary and the Secretary of the Treasury will review documented complaints that a State is failing to comply with requirements specified in the terms and conditions of any approved section 1332 waiver.

(3) The Secretary and the Secretary of the Treasury will promptly share with a State any complaint that the Secretary and the Secretary of the Treasury has received and will also provide notification of any applicable monitoring and compliance issues.

(c) *Post award.* Within at least 6 months after the implementation date of a section 1332 waiver and annually thereafter, a State must hold a public forum to solicit comments on the progress of a section 1332 waiver. The State must hold the public forum at which members of the public have an opportunity to provide comments and must provide a summary of the forum to the Secretary as part of the quarterly report specified in § 155.1324(a) that is associated with the quarter in which the forum was held, as well as in the annual report specified in § 155.1324(b) that is associated with the year in which the forum was held.

(1) The State must publish the date, time, and location of the public forum in a prominent location on the State's public Web site, at least 30 days prior to the date of the planned public forum.

(2) [Reserved]

(d) *Terminations and suspensions.* The Secretary and the Secretary of the Treasury reserve the right to suspend or terminate a section 1332 waiver in whole or in part, at any time before the date of expiration, whenever the Secretaries determine that a State has materially failed to comply with the terms of a section 1332 waiver.

(e) *Closeout costs.* If all or part of a section 1332 waiver is terminated or suspended, or if a portion of a section 1332 waiver is withdrawn, Federal funding is limited to normal closeout costs associated with an orderly termination, suspension, or withdrawal, including service costs during any approved transition period, and administrative costs of disenrolling participants.

(f) *Federal evaluators.* (1) A State must fully cooperate with the Secretary, the Secretary of the Treasury, or an independent evaluator selected by the Secretary or the Secretary of the Treasury to undertake an independent evaluation of any component of a section 1332 waiver.

(2) As part of this required cooperation, a State must submit all requested data and information to the Secretary, the Secretary of the Treasury, or the independent evaluator.

§ 155.1324 State reporting requirements.

(a) *Quarterly reports.* A State must submit quarterly reports to the Secretary in accordance with the terms and conditions of the State's section 1332 waiver. These quarterly reports must include, but are not limited to, reports of any ongoing operational challenges and plans for and results of associated corrective actions.

(b) *Annual reports.* A State must submit an annual report to the Secretary documenting all of the following:

(1) The progress of the section 1332 waiver.

(2) Data on compliance with section 1332(b)(1)(A) through (D) of the Affordable Care Act.

(3) A summary of the annual post-award public forum, held in accordance with § 155.1320(c), including all public comments received at such forum regarding the progress of the section 1332 waiver and action taken in response to such concerns or comments.

(4) Other information consistent the State's approved terms and conditions.

(c) *Submitting and publishing annual reports.* A State must submit a draft annual report to the Secretary no later than 90 days after the end of each waiver year, or as specified in the waiver's terms and conditions.

(1) Within 60 days of receipt of comments from the Secretary, a State must submit to the Secretary the final annual report for the waiver year.

(2) The draft and final annual reports are to be published on a State's public Web site within 30 days of submission

and approval to the Secretary, respectively.

§ 155.1328 Periodic evaluation requirements.

(a) *General.* (1) The Secretary and the Secretary of the Treasury shall periodically evaluate the implementation of a program under a section 1332 waiver consistent with guidance published by the Secretary and the Secretary of the Treasury and any terms and conditions governing the section 1332 waiver.

(2) Each periodic evaluation must include a review of the annual report or reports submitted by the State in accordance with § 155.1324 that relate to the period of time covered by the evaluation.

Authority: Sec. 1332 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

Approved: February 22, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: March 4, 2011.

Kathleen Sebelius,

Secretary of Health and Human Services.

Approved: March 7, 2011.

Michael F. Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–5583 Filed 3–10–11; 11:15 am]

BILLING CODE 4510–29–P, 4120–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0099; FRL–9280–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Adoption of Control Techniques Guidelines for Flat Wood Paneling Surface Coating Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania). This SIP revision includes amendments to Chapter 121—General Provisions and Chapter 129—Standards for Sources of Title 25 of the Pennsylvania Code. Pennsylvania's SIP revision meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for flat wood paneling surface coating processes and will help Pennsylvania attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0099 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0099, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0099. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 4, 2011, the Pennsylvania Department of Environmental Protection (PADEP) submitted to EPA a SIP revision concerning the adoption of the CTG for flat wood paneling surface coating processes.

I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, States must revise their SIPs to include RACT for sources of volatile organic compounds (VOC) emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment.

CTGs are intended to provide state and local air pollution control authorities information that should assist them in determining RACT for VOCs from various sources, including flat wood paneling surface coatings. In developing these CTGs, EPA, among other things, evaluated the sources of VOC emissions from this industry and the available control approaches for addressing these emissions, including the costs of such approaches. Based on available information and data, EPA provided recommendations for RACT for VOCs from flat wood paneling.

In June 1978, EPA published a CTG for flat wood paneling coatings (EPA–

450/2–78–034). This CTG discusses the nature of VOC emissions from this industry, available control technologies for addressing such emissions, the costs of available control options, and other items. EPA promulgated national standards of performance for new stationary sources New Source Performance Standards for the flat wood paneling industry and EPA also published a national emission standard for hazardous air pollutants (NESHAP) for this industry.

In 2006 and 2007, after conducting a review of currently existing state and local VOC emission reduction approaches for the flat wood paneling industry, reviewing the 1978 CTG and the NESHAP for this industry, and taking into account the information that has become available since then, EPA developed a new CTG for surface coating of flat wood paneling, entitled *Control Techniques Guidelines for Flat Wood Paneling Coatings* (Publication No. EPA 453/R–06–004). Flat wood paneling coatings means wood paneling products that are any interior, exterior, or tileboard panel to which a protective, decorative, or functional material or layer has been applied. Flat wood paneling, like most wood products, are vulnerable to light, moisture, and insects. Coatings are used for three purposes: Protection, appearance, and surface modification. Surface coatings are applied to reduce potential damage from environmental elements such as moisture and temperature extremes and other climate-related hazards and from insect infestation. Coatings are also applied to enhance surfaces to make other coatings more effective. Finally, coatings are applied to improve the appearance of the wood product. Releases of VOCs occur during the coating process as the coatings are mixed or thinned, as they are applied to the substrate, and as they dry and the VOCs within the coating evaporate into the air.

II. Summary of SIP Revision

On January 4, 2011, PADEP submitted to EPA a SIP revision concerning the adoption of the CTG for flat wood paneling surface coating processes. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. Pennsylvania has adopted EPA's CTG standards for flat wood paneling surface coating processes. These regulations are in Chapter 121—General Provisions and in Chapter 129—Standards for Sources, in Title 25 of the Pennsylvania Code. Specifically, this revision amends the existing regulations at sections 121.1, 129.51, 129.66, and adds new section 129.52c. Several definitions were added in section 121.1 and section 129.51 was amended to extend coverage to flat wood paneling surface coating processes. New section 129.52c includes VOC emission limits, work practices, and recordkeeping and reporting requirements, all of which are consistent with EPA's CTG for flat wood paneling surface coating processes. The emission limits of VOCs for flat wood paneling surface coatings are shown in Table 1. These emission limits apply if the total actual VOC emissions from all flat wood paneling surface coating operations at the facility are equal to or greater than 15 pounds (6.8 kilograms) per day, before consideration of controls.

TABLE 1—EMISSION LIMITS OF VOCS FOR FLAT WOOD PANELING SURFACE COATINGS

Surface coatings, inks, or adhesives applied to the following flat wood paneling categories	Should meet one of these emission limits	
	lb VOC/gal coating solids	g VOC/liter coating solids
Printed interior panels made of hardwood, plywood, or thin particleboard	2.9	350
Natural finish hardwood plywood panels	2.9	350
Class II finishes on hardboard panels	2.9	350
Tileboards	2.9	350
Exterior siding	2.9	350

III. Proposed Action

EPA is proposing to approve Pennsylvania's SIP revision for adoption of the CTG standards for flat wood paneling surface coating processes. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule concerning Pennsylvania's adoption of a

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 1, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–5796 Filed 3–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0903; FRL–9278–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the Open Burning Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The revisions recodify the open burning regulations which are currently in the Virginia SIP. There are no substantive changes to the rule. In the Final Rules section of this **Federal Register**, EPA is approving Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0903 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: frankford.harold@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0902, Harold A. Frankford, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0903. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 1, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–5621 Filed 3–11–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1155]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On November 9, 2010, FEMA published in the **Federal Register** a proposed rule that included erroneous Base Flood Elevation (BFE) location descriptions for the Cartecay River in Gilmer County, Georgia. The location description for the proposed BFE of 1,290 feet, referenced to the North American Vertical Datum of 1988, should have located the proposed BFE as being approximately 1.12 miles upstream of Holt Bridge Road; and the location description for the proposed

BFE of 1,519 feet, referenced to the North American Vertical Datum of 1988, should have located the proposed BFE as being approximately 0.24 mile upstream of the Owltown Creek confluence.

DATES: Comments pertaining to the location descriptions for the Cartecay River BFEs are to be submitted on or before June 13, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1155, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 75 FR 68744, in the November 9, 2010, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "Gilmer County, Georgia, and Incorporated Areas" addressed the flooding source Cartecay River.

The proposed rule listed the location description for the proposed BFE of 1,290 feet, referenced to the North American Vertical Datum of 1988, as being approximately 0.24 mile upstream of the confluence with Owltown Creek. The correct location of this proposed BFE is approximately 1.12 miles upstream of Holt Bridge Road. The proposed rule also listed the location description for the proposed BFE of 1,519 feet, referenced to the North American Vertical Datum of 1988, as being approximately 1.12 miles upstream of Holt Bridge Road. The correct location of this proposed BFE is approximately 0.24 mile upstream of the Owltown Creek confluence.

This proposed rule correction is reopening the comment period for the Cartecay River, for the locations of the proposed BFEs of 1,290 feet and 1,519 feet, both referenced to the North American Vertical Datum of 1988, due to the error in listing the location descriptions for these BFEs in the previously published proposed rule at 75 FR 68744.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 4, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–5818 Filed 3–11–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1069]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On September 15, 2009, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 74 FR 47169. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Sanpete County, Utah, and Incorporated Areas. Specifically, it addresses the flooding source South Creek.

DATES: Comments are to be submitted on or before June 13, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1069, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 74 FR 47169, in the September 15, 2009, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "Sanpete County, Utah, and Incorporated Areas" addressed the flooding source South Creek. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet,

and/or communities affected for that flooding source. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Sanpete County, Utah, and Incorporated Areas				
South Creek	Approximately 320 feet east of 100 South Street	None	+5529	City of Manti, Unincorporated Areas of Sanpete County.
	Approximately 596 feet upstream of the Manti Creek confluence.	None	+5838	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Manti

Maps are available for inspection at City Hall, 50 South Main Street, Manti, UT 84642.

Unincorporated Areas of Sanpete County

Maps are available for inspection at the Sanpete County Building and Zoning Office, 160 North Main Street, Manti, UT 84642.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 4, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–5819 Filed 3–11–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1072]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On September 8, 2009, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 74 FR 46074. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Troup County, Georgia, and Incorporated Areas. Specifically, it addresses the flooding source Shoal Creek.

DATES: Comments are to be submitted on or before June 13, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1072, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 74 FR 46074, in the September 8, 2009, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "Troup County, Georgia, and Incorporated Areas" addressed the flooding source Shoal Creek. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for that flooding source. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding Source(s)	Location of Referenced Elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Troup County, Georgia, and Incorporated Areas				
Shoal Creek	Approximately 2,800 feet downstream of Hammett Road.	None	+650	City of LaGrange
	Approximately 1,500 feet upstream of Hammett Road	None	+669	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of LaGrange
Maps are available for inspection at City Hall, 200 Ridley Avenue, LaGrange, Georgia 30240.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 4, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–5834 Filed 3–11–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1168]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On December 7, 2010, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 75 FR 75945. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Skagit County, Washington and Incorporated Areas. Specifically, it addresses the following flooding sources: Left Bank Overflow Main Stem Skagit River, Left Bank Overflow Main Stem Skagit River/South Fork Skagit River, Left Bank Overflow North Fork Skagit River, Main Stem Skagit River, North Fork Skagit River, Overflow from the Main Stem Skagit River between the North Fork Skagit River and the South Fork Skagit River, Padilla Bay, Right Bank Overflow Main Stem Skagit River, Right Bank Overflow Main Stem Skagit River/North Fork Skagit River, Right Bank Overflow North Fork Skagit River, Right Bank Overflow South Fork Skagit River, Samish Bay, Samish Bay/Padilla Bay, Simlik Bay, Skagit Bay, Skagit Bay/Swinomish Channel, Skagit River, Skagit River Delta Overbank Flowpath 1, Skagit River Delta Overbank Flowpath 2, Skagit River Delta Overbank Flowpath 3, South Fork Skagit River, and Swinomish Channel.

DATES: Comments are to be submitted on or before June 13, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1168, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that

the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 75 FR 75945, in the December 7, 2010, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "Skagit County, Washington, and Incorporated Areas" addressed the following flooding sources: Left Bank Overflow Main Stem Skagit River, Left Bank Overflow Main Stem Skagit River/South Fork Skagit River, Left Bank Overflow North Fork Skagit River, Main Stem Skagit River, North Fork Skagit River, Overflow from the Main Stem Skagit River between the North Fork Skagit River and the South Fork Skagit River, Padilla Bay, Right Bank Overflow Main Stem Skagit River, Right Bank Overflow Main Stem Skagit River/North Fork Skagit River, Right Bank Overflow North Fork Skagit River, Right Bank Overflow South Fork Skagit River, Samish Bay, Samish Bay/Padilla Bay, Simlik Bay, Skagit Bay, Skagit Bay/Swinomish Channel, Skagit River, Skagit River Delta Overbank Flowpath 1, Skagit River Delta Overbank Flowpath 2, Skagit River Delta Overbank Flowpath 3, South Fork Skagit River, and Swinomish Channel. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for these flooding sources. It also contained erroneous map repository addresses for the City of Burlington, the City of Sedro-Woolley, the Swinomish Indian Tribal Community, and the Town of Lyman. There were also some table formatting and alignment errors. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Skagit County, Washington, and Incorporated Areas				
Left Bank Overflow Main Stem Skagit River.	Approximately 1,400 feet north of the intersection of Hickox Road and I–5.	#2	+23	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 300 feet west of the intersection of Anderson Road and Old Highway 99.	#2	+24	
Left Bank Overflow Main Stem Skagit River.	Approximately 0.43 mile east of the intersection of Dike Road and Britt Road.	+19	+24	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 1,500 feet west of the intersection of Riverview Lane and Dike Road.	+19	+27	
Left Bank Overflow Main Stem Skagit River.	Just northwest of the intersection of Britt Road and Dike Road.	#3	+26	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 250 feet north of Dike Road and approximately 1,000 feet west of Riverview Lane.	#3	+28	
Left Bank Overflow Main Stem Skagit River.	Approximately 900 feet north of Blackburn Road between 2nd Street and 3rd Street.	#1	+25	City of Mount Vernon, Unincorporated Areas of Skagit County.
	At the intersection of Freeway Drive and Cameron Way.	#1	+39	
Left Bank Overflow Main Stem Skagit River.	Just north of Stewart Road between Riverside Drive and the Burlington Northern Railroad.	#3	+41	City of Mount Vernon.
	Just northwest of the intersection of Hoag Road and the Burlington Northern Railroad.	#3	+42	
Left Bank Overflow Main Stem Skagit River.	Approximately 1.4 miles west of the intersection of I–5 and State Route 538, at levee.	+34	+40	City of Mount Vernon, Unincorporated Areas of Skagit County.
	At the intersection of the Burlington Northern Railroad and State Route 538.	+34	+40	
Left Bank Overflow Main Stem Skagit River.	Just north of the intersection of Hickox Road and Dike Road.	None	+24	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 640 feet west of the intersection of Riverview Lane and Dike Road.	None	+27	
Left Bank Overflow Main Stem Skagit River.	At the intersection of I–5 and Anderson Road	None	+24	City of Mount Vernon.
	At the intersection of I–5 and Section Street	None	+28	
Left Bank Overflow Main Stem Skagit River/South Fork Skagit River.	Just north of Fir Island Road, at the intersection with the Burlington Northern Railroad.	#3	+20	City of Mount Vernon, Unincorporated Areas of Skagit County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 500 feet south of Hickox Road between the levee and the Burlington Northern Railroad.	#3	+23	
Left Bank Overflow Main Stem Skagit River/South Fork Skagit River.	Approximately 0.75 mile south of the intersection of Milltown Road and Pioneer Highway.	+13	+16	Unincorporated Areas of Skagit County.
	At the intersection of State Route 534 and I–5	+13	+20	
Left Bank Overflow North Fork Skagit River.	Just east of the levee, approximately 350 feet northeast of the intersection of Moore Road and Polson Road.	#1	+16	Unincorporated Areas of Skagit County.
	Just east of the levee, approximately 450 feet north of Moore Road.	#1	+18	
Main Stem Skagit River	At the confluence with the North Fork Skagit River and South Fork Skagit River.	+27	+30	City of Burlington, City of Mount Vernon, City of Sedro-Woolley, Town of La Conner, Unincorporated Areas of Skagit County.
	Just downstream of the Burlington Northern Railroad	+49	+52	
North Fork Skagit River	At the confluence with Skagit Bay	+14	+16	Unincorporated Areas of Skagit County.
	At the confluence with the Main Stem Skagit River and South Fork Skagit River.	+27	+30	
Overflow from the Main Stem Skagit River between the North Fork Skagit River and the South Fork Skagit River.	At the confluence with Skagit Bay	+12	+14	Unincorporated Areas of Skagit County.
	At the intersection of Moore Road and Dry Slough Road.	+13	+18	
Overflow from the Main Stem Skagit River between the North Fork Skagit River and the South Fork Skagit River.	Approximately 200 feet north of Moore Road between the North Fork Skagit River and Dry Slough Road.	#3	+18	Unincorporated Areas of Skagit County.
	Approximately 880 feet southwest of the confluence with North Fork Skagit River and the South Fork Skagit River.	#3	+21	
Padilla Bay	Approximately 1,000 feet northwest of the intersection of Highway 20 and Padilla Heights Road.	None	+13	Swinomish Indian Tribal Community.
	Approximately 100 feet north of the crossing at State Route 20 and the Swinomish Channel.	None	+13	
Right Bank Overflow Main Stem Skagit River.	Approximately 0.36 mile west of the intersection of Penn Road and Calhoun Road.	#3	+21	City of Mount Vernon, Unincorporated Areas of Skagit County.
	Approximately 400 feet south of the levee between Moores Garden Road and Baker Street.	#3	+30	
Right Bank Overflow Main Stem Skagit River.	Approximately 300 feet north of the intersection of Dunbar Avenue and Avon Allen Road.	#3	+24	Unincorporated Areas of Skagit County.
	Approximately 500 feet east of Avon Allen Road between Bennett Road and State Route 536.	#3	+31	
Right Bank Overflow Main Stem Skagit River.	Approximately 400 feet northeast of the intersection of Bennett Road and State Route 536.	#3	+25	Unincorporated Areas of Skagit County.
	Approximately 500 feet southeast of the intersection of Bennett Road and Silver Lane.	#3	+34	
Right Bank Overflow Main Stem Skagit River.	Approximately 400 feet west of the intersection of Pulver Road and McCorquedale Road.	#3	+32	Unincorporated Areas of Skagit County.
	Approximately 400 feet east of Pulver Road between Whitemarsh Road and McCorquedale Road.	#3	+34	
Right Bank Overflow Main Stem Skagit River/North Fork Skagit River.	At Kamb Road approximately 0.47 mile south of Calhoun Road.	#3	+19	Unincorporated Areas of Skagit County.
	Approximately 0.38 mile southeast of the intersection of Calhoun Road and Kamb Road.	#3	+20	
Right Bank Overflow North Fork Skagit River.	Just south of Kamb Road approximately 0.66 mile east of Beaver Marsh Road.	#3	+19	Unincorporated Areas of Skagit County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 1,600 feet east of the intersection of Beaver Marsh Road and Marsh Road.	#3	+19	
Right Bank Overflow South Fork Skagit River.	Between Moore Road and Polson Road	#1	+17	Unincorporated Areas of Skagit County.
	Approximately 870 feet south of Moore Road, at levee.	#1	+18	
Samish Bay	At the intersection of Chuckanut Drive and South Blanchard Drive.	+12	+13	Unincorporated Areas of Skagit County.
Samish Bay/Padilla Bay	At the intersection of Bayview-Edison Road and Samish Island Road.	+12	+13	Unincorporated Areas of Skagit County.
Simlik Bay	Approximately 0.32 mile southwest of the intersection of Snee-Oosh Road and Snee-Oosh Lane.	None	+12	Swinomish Indian Tribal Community.
	Approximately 100 feet southwest of the intersection of Reservation Road and Simlik Bay Road.	None	+12	
Skagit Bay	Approximately 0.36 mile northwest of the intersection of Pioneer Highway and Milltown Road.	+15	+14	Unincorporated Areas of Skagit County.
	At the confluence of Ishois Slough and Tom Moore Slough.	+17	+14	
Skagit Bay	Approximately 200 feet northwest of the intersection of Sherman Avenue and Chilberg Avenue.	None	+12	Swinomish Indian Tribal Community.
	Approximately 0.32 mile southwest of the intersection of Snee-Oosh Road and Snee-Oosh Lane.	None	+12	
Skagit Bay	Approximately 400 feet northwest of Pull and Be Damned Point Road.	None	+14	Swinomish Indian Tribal Community.
	Approximately 200 feet southwest of the intersection of Sherman Avenue and Chilberg Avenue.	None	+14	
Skagit Bay/Swinomish Channel.	Approximately 600 feet southwest of the intersection of North Pearle Jensen Way and East Pearle Jensen Way.	None	+12	Swinomish Indian Tribal Community.
	Approximately 400 feet west of Pull and Be Damned Point Road.	None	+12	
Skagit River	Just upstream of the Burlington Northern Railroad	+49	+52	City of Sedro-Woolley, Town of Concrete, Town of Hamilton, Town of Lyman, Unincorporated Areas of Skagit County.
	Approximately 1.0 mile upstream of the confluence with the Baker River.	+197	+198	
Skagit River Delta Overbank Flowpath 1.	Just upstream of Pulver Road	+27	+32	City of Burlington, Unincorporated Areas of Skagit County.
	Approximately 1,170 feet southeast of the intersection of Lafayette Road and Peter Anderson Road.	+45	+46	
Skagit River Delta Overbank Flowpath 2.	At the confluence with Samish Bay	+12	+13	Unincorporated Areas of Skagit County.
	Just downstream of Pulver Road	+27	+32	
Skagit River Delta Overbank Flowpath 3.	At the confluence with the Swinomish Channel	+12	+15	Town of La Conner, Unincorporated Areas of Skagit County.
	Just downstream of Pulver Road	+27	+32	
South Fork Skagit River	At the confluence with Ishois Slough and Tim Moore Slough.	+17	+14	Unincorporated Areas of Skagit County.
	At the confluence with the Main Stem Skagit River and the North Fork Skagit River.	+27	+30	
Swinomish Channel	Just north of Highway 20	None	+11	Swinomish Indian Tribal Community.
	Approximately 600 feet northwest of the intersection of North Pearle Jensen Way and East Pearle Jensen Way.	None	+11	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Burlington
Maps are available for inspection at City Hall, 833 South Spruce Street, Burlington, WA 98233.

City of Mount Vernon
Maps are available for inspection at City Hall, 910 Cleveland Avenue, Mount Vernon, WA 98273.

City of Sedro-Woolley
Maps are available for inspection at the Planning and Building Department, City Hall, 325 Metcalf Street, Sedro-Woolley, WA 98284.

Swinomish Indian Tribal Community
Maps are available for inspection at 11404 Moorage Way, La Conner, WA 98257.

Town of Concrete
Maps are available for inspection at the Town Hall, 45672 Main Street, Concrete, WA 98237.

Town of Hamilton
Maps are available for inspection at the Town Hall, 584 Maple Street, Hamilton, WA 98255.

Town of La Conner
Maps are available for inspection at the Town Hall, 204 Douglas Street, La Conner, WA 98257.

Town of Lyman
Maps are available for inspection at the Town Hall, 8405 South Main Street, Lyman, WA 98263.

Unincorporated Areas of Skagit County
Maps are available for inspection at the Skagit County Department of Planning and Developmental Services, 1800 Continental Place, Mount Vernon, WA 98273.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 7, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–5828 Filed 3–11–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 11–34]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Jurisdictional separations is the process by which incumbent local exchange carriers (incumbent LECs) apportion regulated costs between the intrastate and interstate jurisdictions. In this document, the Commission seeks comment on extending the current freeze of part 36 category relationships and jurisdictional cost allocation factors used in jurisdictional separations. Extending the freeze would allow the Commission to provide stability for, and avoid imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive reform of the jurisdictional separations process.

DATES: Comments are due on or before March 28, 2011. Reply comments are due on or before April 4, 2011.

ADDRESSES: You may submit comments, identified by WC Docket No. 80–286, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response. Include the docket number in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Ball, Attorney Advisor, at 202–418–1577, Pricing Policy Division, Wireline Competition Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 80–286, FCC 11–34, released on March 1, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

Background

1. Jurisdictional separations is the process by which incumbent LECs apportion regulated costs between the intrastate and interstate jurisdictions. The NPRM proposes extending the current freeze of part 36 category relationships and jurisdictional cost allocation factors used in jurisdictional separations, which freeze would otherwise expire on June 30, 2011, until June 30, 2012. Extending the freeze will allow the Commission to provide stability for, and avoid imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive separations reform.

2. The 2001 Separations Freeze Order, 66 FR 33202, June 21, 2001, froze all part 36 category relationships and allocation factors for price cap carriers and all allocation factors for rate-of-return carriers. Rate-of-return carriers had the option to freeze their category relationships at the outset of the freeze. The freeze was originally established July 1, 2001 for a period of five years, or until the Commission completed separations reform, whichever occurred first. The 2006 Separations Freeze Extension Order, 71 FR 29843, May 24, 2006, extended the freeze for three years or until the Commission completed separations reform, whichever occurred first. The 2009 Separations Freeze Extension Order, 74 FR 23955, May 22, 2009, extended the freeze until June 30, 2010, and the 2010 Separations Freeze Extension Order, 75 FR 30301, June 1, 2010, extended the freeze until June 30, 2011.

3. In this NPRM the Commission seeks comment on extending the freeze for one year, until June 30, 2012. The proposed extension would allow the Commission to continue to work with the Federal-State Joint Board on Separations to achieve comprehensive separations reform. Pending comprehensive reform, the Commission tentatively concludes that the existing freeze should be extended on an interim basis to avoid the imposition of undue administrative burdens on incumbent LECs. The Commission asks commenters to consider how costly and burdensome an extension of the freeze, or a reversion to the pre-freeze part 36 rules, would be for small incumbent LECs, and whether an extension would disproportionately affect specific types of carriers or ratepayers. Incumbent LECs have not been required to utilize the programs and expertise necessary to prepare separations information since the inception of the freeze almost nine years ago. If the Commission does not extend the separations freeze, and instead allows the earlier separations rules to return to force, incumbent LECs would be required to reinstitute their separations processes. Given the imminent expiration of the current separations freeze, it is unlikely that incumbent LECs would have sufficient time to reinstitute the separations processes necessary to comply with the earlier separations rules.

4. The extended freeze would be implemented as described in the 2001 Separations Freeze Order. Specifically, price-cap carriers would use the same relationships between categories of investment and expenses within part 32 accounts and the same jurisdictional allocation factors that have been in place since the inception of the current freeze on July 1, 2001. Rate-of-return carriers would use the same frozen jurisdictional allocation factors, and would use the same frozen category relationships if they had opted previously to freeze those as well.

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Ex Parte Requirements

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

In the *1997 Separations NPRM,* the Commission noted that the network infrastructure by that time had become vastly different from the network and services used to define the cost categories appearing in the Commission's part 36 jurisdictional separations rules, and that the separations process codified in part 36 was developed during a time when common carrier regulation presumed that interstate and intrastate telecommunications service must be provided through a regulated monopoly. Thus, the Commission initiated a proceeding with the goal of reviewing comprehensively the Commission's part 36 procedures to ensure that they meet the objectives of the 1996 Act. The Commission sought comment on the extent to which legislative changes, technological changes, and market changes might warrant comprehensive reform of the separations process. Because over twelve years have elapsed since the closing of the comment cycle on the *1997 Separations NPRM,* and over eight years have elapsed since the imposition of the freeze, and because the industry has experienced myriad changes during that time, we ask that commenters, in their comments on the present NPRM, comment on the impact of a further extension of the freeze.

The purpose of proposed extension of the freeze is to ensure that the Commission's separations rules meet the objectives of the 1996 Act, and to allow the Commission additional time to consider changes that may need to be made to the separations process in light of changes in the law, technology, and market structure of the telecommunications industry.

Legal Basis

The legal basis for the NPRM is contained in sections 1, 2, 4, 201–205, 215, 218, 220, 229, 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–205, 215, 218, 220, 229, 254 and 410, and §§ 1.1200 through 1.1216 of the Commission's rules, 47 CFR 1.1, 1.411 through 1.429, and 1.1200 through 1.1216.

Description and Estimate of the Number of Small Entities To Which Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard established by the SBA, and is not dominant in its field of operation. Section 121.201 of the SBA regulations defines a small wireline telecommunications business as one with 1,500 or fewer employees. In addition, the SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. Because our proposals concerning the part 36 separations process will affect all incumbent LECs providing interstate services, some entities employing 1500 or fewer employees may be affected by the proposals made in this NPRM. We therefore have included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

Neither the Commission nor the SBA has developed a small business size standard specifically for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under the SBA definition, a carrier is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 1,311 incumbent LECs reported that they were engaged in the provision of local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

None.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

As described above, seven years have elapsed since the imposition of the freeze, thus, we ask commenters, in their comments on the present NPRM, address the impact of a further extension of the freeze. We seek comment on the effects our proposals would have on small entities, and whether any rules that we adopt should apply differently to small entities. We direct commenters to consider the costs and burdens of an extension on small incumbent LECs and whether the extension would disproportionately affect specific types of carriers or ratepayers.

Implementation of the proposed freeze extension would ease the administrative burden of regulatory compliance for LECs, including small incumbent LECs. The freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1500 employees or fewer, to complete certain annual studies formerly required by the Commission's rules. If an extension of the freeze can be said to have any affect under the RFA, it is to reduce a regulatory compliance burden for small incumbent LECs, by abating the aforementioned separations studies and providing these carriers with greater regulatory certainty.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Initial Paperwork Reduction Act of 1995 Analysis

The NPRM does not propose any new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small

business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, and Uniform System of Accounts.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 36 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

2. In 47 CFR part 36 remove the words "June 30, 2011" and add, in their place, the words "June 30, 2012" in the following places:

a. Section 36.3(a), (b), (c), (d), and (e);
b. Section 36.123(a)(5), and (a)(6);
c. Section 36.124(c), and (d);
d. Section 36.125(h), and (i);
e. Section 36.126(b)(5), (c)(4), (e)(4), and (f)(2);
f. Section 36.141(c);
g. Section 36.142(c);
h. Section 36.152(d);
i. Section 36.154(g);
j. Section 36.155(b);
k. Section 36.156(c);
l. Section 36.157(b);
m. Section 36.191(d);
n. Section 36.212(c);
o. Section 36.214(a);
p. Section 36.372;
q. Section 36.374(b), and (d);
r. Section 36.375(b)(4), and (b)(5);
s. Section 36.377(a), (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii), (a)(5)(vii), and (a)(6)(vii);
t. Section 36.378(b)(1);
u. Section 36.379(b)(1), and (b)(2);
v. Section 36.380(d), and (e);
w. Section 36.381(c) and (d); and
x. Section 36.382(a).

[FR Doc. 2011–5817 Filed 3–11–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 11–372; MB Docket No. 11–38; RM–11621]

Radio Broadcasting Services; Hebbronville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford, proposing the substitution of Channel 282A for vacant Channel 232A at Hebbronville, Texas. The proposed substitution of Channel 282A at Hebbronville accommodates the hybrid application, which requests the substitution of Channel 232A for Channel 282A at Benavides, Texas. *See* File No. BNPH–20070502ADP. A staff engineering analysis indicates that Channel 282A can be allotted to Hebbronville consistent with the minimum distance separation requirements of the Rules with a site restriction 11 kilometers (6.8 miles) northwest of the community. The reference coordinates are 27–23–18 NL and 98–44–26 WL. The proposed Channel 282A at Hebbronville is located 320 kilometers from the Mexican Border. Therefore, Mexican concurrence has been requested.

DATES: Comments must be filed on or before April 21, 2011, and reply comments on or before May 6, 2011.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 2215 Cedar Springs Rd., #1605, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11–38, adopted February 25, 2011, and released February 28, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 232A at Hebbronville, and by adding Channel 282A at Hebbronville.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission.

[FR Doc. 2011–5814 Filed 3–11–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 665

[Docket No. FTA–2011–0015]

RIN 2132–AB01

Bus Testing; Calculation of Average Passenger Weight and Test Vehicle Weight

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Transit Administration (FTA) is proposing to amend its bus testing regulation to more accurately reflect average passenger weights and actual transit vehicle loads. Specifically, FTA is proposing to change the average passenger weight from 150 lbs to 175 lbs. In addition, FTA is proposing to change the floor space occupied per standing passenger from 1.5 to 1.75 square feet, and updating the Structural Strength and Distortion test procedures.

DATES: Comments must be received no later than May 13, 2011. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments (identified by the agency name and DOT Docket ID Number FTA–2011–0015) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: For technical information, Gregory Rymarz, Bus Testing Program Manager, Office of Research, Demonstration, and Innovation (TRI), (202) 366–6410, *gregory.rymarz@dot.gov.* For legal information, Richard Wong, Office of the Chief Counsel (TCC), (202) 366–0675, *richard.wong@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Transit Administration (FTA) is issuing a Notice of Proposed Rulemaking (NPRM) to update its bus testing protocols to carry out the bus testing program authorized at 49 U.S.C. 5318 and implemented by 49 CFR part 665. On October 5, 2009, FTA published a Final Rule in the **Federal Register** (74 FR 51083) that incorporated brake performance and emissions tests into FTA's bus testing program as required by 49 U.S.C. 5318, as well as several other non-statutory changes that will improve the program, including the establishment of protocols to determine the appropriate loading of vehicles during test procedures and addressing buses that exceeded weight limits when fully loaded.

During the comment period leading to the Final Rule, FTA received two comments outside the scope of the notice recommending that FTA increase the simulated ballast weight from the proposed 150 lbs per passenger provided in the definitions of "gross vehicle weight" and "seated load weight" (the value that had been in use since the beginning of the program) to an amount that more accurately reflects the changes to the average weight of Americans over the last several decades. FTA acknowledged that the suggestion was well taken, but noted that the establishment of a more accurate average passenger weight was of Department-wide interest, and committed itself to initiate a new rulemaking to amend Part 665 only after consultations within the Department. FTA has consulted within the Department, and as a result of those consultations, is issuing this NPRM.

In its previous rulemaking action, FTA made note of the fact that a number of buses tested at the Bus Testing Center had not been tested in their fully loaded condition (*i.e.,* with all seats and standee positions occupied) because doing so would have caused their actual weight to exceed either their gross vehicle weight ratings (GVWR) or a front or rear gross axle weight rating (GAWR). Instead, buses were loaded to the maximum weight rating and a notation was made in the vehicle's final test report.

In its earlier NPRM, FTA noted that the test data might not reflect the actual performance of these buses in real-life service, particularly during rush hour when operators frequently allow all seats and aisles to be filled without regard to the GVWR or GAWR to avoid leaving passengers behind at a stop. FTA sought comment on three possible approaches for addressing this situation: (1) Performing tests on the test track (which is not a public roadway) with all seats and standee positions ballasted, (2) deleting ballast until the vehicle does not exceed its GVWR and noting such fact in the test report (which had been the policy up to that time), or (3) declining to test a bus that exceeds its GAWR or GVWR when loaded to full capacity.

FTA determined that declining to test a vehicle whose GVW exceeds its GVWR is impractical, noting that the entire purpose of the bus testing program is to carry out the statutory mandate of verifying that the bus can withstand the rigors of regular transit service, and testing a bus up to its GVWR but no higher, despite the inability to embark the equivalent of a full complement of passengers, is unrealistic and may not accurately reflect rush-hour operating conditions when every available seat is filled and drivers commonly allow "crush loads" of standees in the aisle.

Under FTA's revised testing protocol, buses are now ballasted with a fully loaded passenger complement of seated and standee passengers during the gross vehicle weight portion and with all seats filled during the seated load weight portion of the testing because FTA believes data on how a bus performs under fully loaded conditions is essential to the purchaser in supporting acquisition decisions, developing preventive maintenance schedules, and budgeting for unscheduled maintenance. In addition, purchasing a vehicle appropriate for actual operating conditions will lessen premature structural fatigue and assist in avoiding catastrophic failures caused by overstressed and overworked structural and operational components, ensuring the availability of such vehicles for passenger service.

This NPRM is based on modern scientific data. FTA's earlier selection of the 150 pound passenger weight assumption was based on the number established by FTA's sister DOT mode, the National Highway Traffic Safety Administration (NHTSA), in its calculation of the Gross Vehicle Weight Rating at 49 CFR 567.4(g)(3). Although NHTSA did not provide an explanation for this figure in its 1971 rulemaking documents, NHTSA staff believes their average was based on data derived from the National Health Examination Survey for 1960–1962. That survey has been continued by the Centers for Disease Control and Prevention (CDC) through the National Health and Nutrition Examination Survey (NHANES). In its October 22, 2008, National Health Statistics Report (*http://www.cdc.gov/nchs/data/nhsr/nhsr010.pdf*), the CDC's National Center for Health Statistics calculated a mean average weight of 194.7 pounds for male adults 20 years of age and older, and a median weight

of 188.8 pounds. For women 20 years of age and older, the CDC calculated a mean weight of 164.7 pounds, and a median weight of 155.8 pounds.

Based on the suggestions from the commenters and confirmation using the statistical NHANES data from the CDC, FTA believes that 175 pounds is an appropriate average weight to assume for testing buses. This is also within the range of average passenger weights used by other transportation modes with regulatory authority such as the Federal Aviation Administration's 190 lb. summer weight and 195 lb. winter weight passenger weight averages (*See*, Advisory Circular 120–27E, "Aircraft Weight and Balance Control," June 10, 2005) and the United States Coast Guard's 185 lb Assumed Average Weight Per Person (*See,* "Passenger Weight and Inspected Vessel Stability Requirements: Final Rule, 75 FR 78064, December 14, 2010).

Because of the increase in passenger weight, FTA is also commensurately proposing to increase the assumed dimensions for a standing passenger from 1.5 square feet of free floor space to 1.75 square feet of free floor space to acknowledge the expanding girth of the average passenger. FTA also seeks comments on this figure.

FTA wishes to emphasize that it is not proposing the increase to 175 pounds in order to "toughen" the testing protocol. Rather, this action is being proposed in order to ensure that the Bus Testing protocols better reflect the actual loads that buses are already carrying in service today.

To avoid conflicts with NHTSA's regulatory definition of gross vehicle weight in 49 CFR part 567 and elsewhere, FTA is proposing to remove the definition of "gross weight" or "gross vehicle weight" from the definitions in section 665.5 and inserting a new definition, "fully loaded weight," which incorporates the heavier and wider dimensions of an average bus rider. FTA is also proposing to amend Appendix A, Section 5, replacing "gross weight" and "gross vehicle weight" with "full load weight" when conducting the structural integrity portions of the test.

Grandfathering

Similar to the approach taken by FTA in the October 2009 Final Rule, FTA is proposing that the date on which a bus testing contract was signed will determine the applicability of the new testing procedures. New bus models for which testing contracts were signed before the effective date of the final rule and that continue to be produced without major changes in any structure or systems will not be required to return to the Bus Testing Center to undergo additional testing using the new fully loaded weight procedures. Buses required to undergo full or partial testing after the effective date would be subjected to the new procedures.

Implementation Period

FTA is proposing to delay the effective date of the final rule for one year after publication. FTA believes this will give bus manufacturers adequate time to review the advertised passenger capacities of their product lines, to identify chassis suitable for the advertised passenger loads, and if necessary to redesign their vehicles to reduce passenger capacity and/or accommodate a heavier-duty chassis. FTA seeks comment regarding the adequacy of the phase-in period.

Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 5318 and 49 U.S.C. 1.51.

B. Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FTA has determined that this action will not have sufficient federalism implications to warrant additional consultation. FTA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional governmental functions.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that "significantly or uniquely affect" Indian communities and that impose "substantial and direct compliance costs" on such communities. FTA has analyzed this action under Executive Order 13175 and believes that this will not have substantial, direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal impact statement is not required.

D. Regulatory Flexibility Act and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272, FTA must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. FTA does not expect this action will have a significant economic impact on a substantial number of small entities.

E. Executive Orders and DOT Regulatory Policies and Procedures

FTA has determined that this action is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032). Executive Order 12866 requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." Consistent with Executive Order 13563 (76 FR 3821, January 21, 2011), FTA has assessed the benefits of the NPRM against potential costs, has attempted to minimize any potential economic burdens, has based its determination on modern scientific data, and provides flexibility and freedom of choice for the affected entities.

The bus testing program itself is statutorily mandated and cannot be eliminated as a means of minimizing an economic burden. Under 49 U.S.C. 5318, FTA funds may not be used to acquire a new bus until a bus of that model has completed testing at a statutorily prescribed facility, with approximately 15 to 20 new bus models completing testing every year. These buses are tested in 4-, 5-, 7-, 10-, or 12-year service life categories as set forth in 49 CFR 665.11(e). In preparing this NPRM, FTA reviewed the data from ten recent test reports and found that one of the buses exceeded their GVWR at their seated load weight using either the 150 pound figure or the 175 pound figure. When tested at the gross vehicle load, *i.e.,* carrying a full complement of

seated and standing passengers, five bus models would have exceeded their GVWR using the 150 pound figure, with two more exceeding the GVWR using the 175 pound figure.

Testing buses using the 175 pound figure will not result in any mandatory additional costs on transit vehicle manufactures or the public transit operators that purchase such vehicles. Rather, FTA is attempting to modify its testing procedures to more accurately reflect a bus model's expected usage based on demonstrable scientific data, namely, the 2008 CDC Report and the most recent bus testing reports.

In addition to providing more accurate test data to assist buyers of public transit vehicles, the NPRM attempts to maximize flexibility and freedom of choice for transit operators who may refuse to carry standees to avoid exceeding a vehicle's GVWR now that the vehicle's carrying capacity has been identified in a test report, buyers may order vehicles with more durable components, or purchase a lighter-duty vehicle if they do not expect to carry capacity passenger loads. Transit vehicle manufactures similarly have the flexibility and freedom of choice to continue using the same components to meet buyers' needs, or they may choose to upgrade individual components, such as chassis, wheels, tires, brakes, or suspensions.

For those manufacturers that choose to upgrade their buses to a more robust configuration, FTA estimates the cost of upgrading a vehicle's components could be as low as $2,500 per vehicle in the 4- to 5-year paratransit-type vehicle categories, between $5,000 and $7,000 in the minibus categories, to as high as $25,000 per vehicle in the 10- to 12-year full-size bus categories. But as noted above, any necessary upgrades are not mandated by the NPRM, but rather, would be negotiated between the buyer and the manufacturer. FTA notes that any cost increase due to a decision to upgrade components would be offset by FTA's financial assistance program which covers at least 80% of a vehicle's capital costs, minimizing any economic impact of this rulemaking on public transit vehicles manufacturers and their customers.

This NPRM's benefits outweigh potential costs because the new testing protocol will allow transit agencies to more accurately identify vehicles that are more likely to meet service life expectations, advertised passenger capacities, and actual loading conditions. The acquisition of sturdier vehicles will decrease maintenance and replacement costs, ensure that vehicles meet their anticipated service lives, and thereby enhance the availability and reliability of transit vehicles for the riding public.

Although the result of this proposed rule may have the effect of encouraging transit agencies to modify their specifications on future procurements to reflect projected passenger loads or transit vehicle manufacturers to upgrade vehicle components to more accurately reflect advertised service loads, this proposed new testing procedure rule will affect only data collected for those vehicles procured with FTA financial assistance and will not directly affect vehicles acquired using private funds or funds from Federal agencies other than FTA, although non-FTA purchasers are likely to be indirect beneficiaries through reviewing the publicly-available bus testing reports prior to purchasing their vehicles and if vehicle manufacturers decide to use the FTA bus testing results as a basis to upgrade components across their full product line.

This action is not expected to adversely affect any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

F. Unfunded Mandates Reform Act of 1995

This action will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This action rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532).

G. Executive Order 13211: Energy Effects

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001, and determined that this is not a significant energy action under that order, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This action does not propose any new information collection burdens.

I. Regulation Identifier Number (RIN)

The U.S. DOT assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

J. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may view the U.S. DOT Privacy Act Statement by visiting *http://docketsinfo.dot.gov/* or at 65 FR 19477 (April 11, 2000).

List of Subjects in 49 CFR Part 665

Buses, Grant programs—transportation, Motor vehicle safety, Public transportation, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, 49 CFR part 665 is proposed to be amended as follows:

PART 665—BUS TESTING

1. The authority citation for part 665 continues to read as follows:

Authority: 49 U.S.C. 5318 and 49 CFR 1.51.

2. Amend § 665.5 as follows:

a. By removing the definition for *Gross weight,* also *gross vehicle weight;*

b. In the definition of "*Seated load weight*" by removing "150 pounds of ballast" and adding in its place "175 pounds of ballast"; and

c. By adding a definition for *Fully loaded weight.*

The addition reads as follows:

§ 665.5 Definitions.

* * * * *

Fully loaded weight means the curb weight of the bus plus passengers simulated by adding 175 pounds of ballast to each seating position and 175 pounds for each standing position (assumed to be each 1.75 square foot of free floor space).

* * * * *

3. Amend Appendix A to part 665 by revising the introductory text and paragraphs a.(1) and (2) of section 5 to read as follows:

Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

* * * * *

5. Structural Integrity

Two complementary structural integrity tests should be performed. Structural strength and distortion tests should be performed at the Bus Testing Center, and the structural durability test should be performed at the test track.

a. Structural Strength and Distortion Tests

(1) A shakedown of the bus structure should be conducted by loading and unloading the bus with a distributed load equal to 2.5 times the fully loaded weight. The bus should then be unloaded and inspected for any permanent deformation on the floor or coach structure. This test should be repeated a second time, and should be repeated up to one more time if the permanent deflections vary significantly between the first and second tests.

(2) The bus should be loaded to its fully loaded weight, with one wheel on top of a curb and then in a pothole. This test should be repeated for all four wheels. The test verifies:

(i) Normal operation of the steering mechanism; and

(ii) Operability of all passenger doors, passenger escape mechanisms, windows, and service doors. A water leak test should be conducted in each suspension travel condition.

* * * * *

Issued on: March 8, 2011.

Peter M. Rogoff,

Administrator.

[FR Doc. 2011–5831 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110210132–1133–01]

RIN 0648–BA65

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quotas and Atlantic Tuna Fisheries Management Measures

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: NMFS proposes to modify Atlantic bluefin tuna (BFT) base quotas for all domestic fishing categories; establish BFT quota specifications for the 2011 fishing year; reinstate pelagic longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area (NED); amend the Atlantic tunas possession at sea and landing regulations to allow removal of Atlantic tunas tail lobes; and clarify the transfer at sea regulations for Atlantic tunas. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS solicits written comments and will hold public hearings to receive oral comments on these proposed actions.

DATES: Written comments must be received on or before April 14, 2011.

The public hearing dates and times are:

1. March 21, 2011, 3 to 5 p.m., Gloucester, MA.

2. March 22, 2011, 6:30 to 8:30 p.m., Barnegat, NJ.

3. March 28, 2011, 7 to 9 p.m., Manteo, NC.

4. April 5, 2011, 5:15 to 7:15 p.m., Silver Spring, MD.

ADDRESSES: You may submit comments, identified by "0648–BA65", by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* 978–281–9340, Attn: Sarah McLaughlin.
- *Mail:* Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930.
- *Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. To be considered, electronic comments must be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.* Do not submit electronic comments to individual NMFS staff.

Supporting documents, including the draft Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis, are available by sending your request to Sarah McLaughlin at the mailing address specified above. These documents and others, such as the Fishery Management Plans described below, also may be downloaded from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/.*

The public hearing locations are:

1. Gloucester—NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

2. Barnegat—Ocean County Library, 112 Burr Street, Barnegat, NJ 08005.

3. Manteo—Town Hall, 407 Budleigh Street, Manteo, NC 27954.

4. Silver Spring—Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as "Atlantic tunas") are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP included framework provisions to promulgate annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT. Since 1982, ICCAT has recommended a Total Allowable Catch of BFT, and since 1991, ICCAT has recommended specific limits (quotas) for the United States and other BFT Contracting Parties.

On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) a final rule, effective November 1, 2006, implementing the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidated management of all Atlantic HMS (*i.e.,* sharks, swordfish, tunas, and billfish)

into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635. Among other things, the Consolidated HMS FMP maintained an allocation scheme, established in the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP), for dividing the baseline annual U.S. BFT quota among several domestic quota categories.

Adjustment of the BFT annual quota is necessary to implement the 2010 ICCAT quota recommendation for western Atlantic bluefin tuna (western BFT), as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. It is necessary to establish the 2011 quota specifications in order to adjust the 2011 BFT baseline quota and subquotas to account for dead discards as well as the amount of 2010 underharvest (of 2010 adjusted quota) allowed by ICCAT to be carried forward to 2011. In addition to modifying the BFT base quotas and establishing the quota specifications, NMFS is proposing three Atlantic tunas management measures, including reinstating pelagic longline vessel target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area (NED); clarifying the regulations concerning Atlantic tunas possession at sea and landing to allow removal of Atlantic tunas tail lobes; and clarifying the Atlantic tunas transfer at sea regulations to address concerns raised in a recent decision by a NOAA Administrative Law Judge (see Atlantic Tunas Transfer at Sea section for case reference).

NMFS has prepared a draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which present and analyze anticipated environmental, social, and economic impacts of several alternatives for each of the major issues contained in this proposed rule. The complete list of alternatives and their analysis is provided in the draft EA/RIR/IRFA, and is not repeated here in its entirety. A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (*see* **ADDRESSES**).

NMFS plans to make daily retention limit adjustments, if needed, for the 2011 fishing year via **Federal Register** notices separate from the final quota specifications. Federal regulations at 50 CFR 635.23 allow the establishment and adjustment of General and Angling category retention limits via inseason actions, and NMFS has in the past used inseason actions for this purpose (*i.e.,* to adjust daily retention limits).

ICCAT Recommendation, Including the Carrying Forward of Underharvest

ICCAT adopted a western BFT Total Allowable Catch (TAC) of 1,750 mt annually for 2011 and 2012 after considering the results of the 2010 western BFT stock assessment and following protracted negotiations among western BFT Contracting Parties (ICCAT Recommendation 10–03—Supplemental Recommendation by ICCAT concerning the western BFT Rebuilding Program). The 1,750-mt TAC, reduced from 1,800 mt for 2010, is expected to allow for continued stock growth under both the low and high stock recruitment scenarios.

ICCAT Recommendation 10–03 includes a revised allocation scheme that now includes the United Kingdom (in respect of Bermuda), France (in respect of St. Pierre and Miquelon), and Mexico. These three ICCAT Contracting Parties previously received western BFT allocations as specific tonnage directly from the TAC prior to application of the agreed allocation scheme (to the United States, Canada, and Japan). The amount of TAC allocated to the Contracting Parties depends on the amount of the overall recommended TAC. For 2011 and 2012, the net effect is that these Contracting Parties will receive the same amounts as they did in 2009 and 2010 (i.e., 4 mt, 4 mt, and 95 mt, respectively, for the United Kingdom, France, and Mexico).

For 2011 and 2012, the ICCAT Recommendation makes the following allocations from the 1,750-mt TAC for bycatch related to directed longline fisheries in the Northeast Distant gear restricted area (NED): 15 mt for Canada and 25 mt for the United States. Following subtraction of these allocations directly from the TAC, the recommendation allocates the remainder to the UK (0.23 percent), France (0.23 percent), Mexico (5.56 percent), the United States (54.02 percent), Canada (22.32 percent) and Japan (17.64 percent). For the United States, 54.02 percent of the remaining 1,710 mt is 923.7 mt annually for 2011 and 2012. This represents the baseline annual U.S. BFT quota analyzed in this EA. Accounting for the 25-mt NED allocation, the total U.S. quota is 948.7 mt annually (i.e., a decrease of 28.7 mt or 2.9 percent from the 2010 total U.S. quota of 977.4 mt).

The current ICCAT recommendation also maintains a provision from previous recommendations allowing a Contracting Party with a quota allocation to make a one-time transfer within a fishing year of up to 15 percent of its quota allocation to other Contracting Parties with quota allocations. Contracting Parties with an allocation of 4 mt or less may transfer up to 100 percent of their allocation. The ICCAT recommendation stipulates that the quota transfer may not be used to cover overharvests, and that a Contracting Party that receives a one-time quota transfer may not re-transfer that quota. Further, as a method for limiting fishing mortality on juvenile BFT, ICCAT continues to recommend a tolerance limit on the annual harvest of BFT measuring less than 115 cm to no more than 10 percent of the total bluefin quota per Contracting Party over the 2011 and 2012 fishing period. The United States implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches (68.5 to less than 119 cm curved fork length)) as appropriate to not exceed the 10-percent limit over the 2-year period.

Notably, ICCAT Recommendation 10–03 limits the amount of unused quota Contracting Parties may carry forward to 2011 to 10 percent of their total quota. This would limit the amount of 2010 U.S. underharvest carried forward to 2011 to 94.9 mt (10 percent of the 948.7 mt total U.S. quota). Previously, ICCAT Recommendation 06–06 reduced the amount of underharvest parties could carry forward from 100 percent of a Contracting Party's total allocation to 50 percent. This aspect of the ICCAT recommendation was maintained through 2010, but ICCAT recommended in 2008 that the amount be reduced effective for 2011 onward (Recommendation 08–04).

Domestic Allocations and Quotas

The 1999 FMP and its implementing regulations established baseline percentage quota shares for the domestic fishing categories. These percentage shares were based on allocation procedures that NMFS developed over several years, based on historical share, fleet size, effort, and landings by category, and stock assessment data collection needs. The baseline percentage quota shares established in the 1999 FMP and continued in the Consolidated HMS FMP (effective since June 1, 1999), are as follows: General category—47.1 percent; Harpoon category—3.9 percent; Purse Seine category—18.6 percent; Angling category—19.7 percent; Longline category—8.1 percent; Trap category—0.1 percent; and Reserve category—2.5 percent. The second column of the table below shows the proposed quotas that result from application of the Consolidated HMS FMP quota shares to

the 2010 ICCAT-recommended baseline annual U.S. BFT quota. These quotas would be codified at § 635.27(a) and would remain in effect until ICCAT adopts a subsequent ICCAT western BFT recommendation. Because ICCAT adopted TACs for 2011 and 2012 in Recommendation 10–03, NMFS currently anticipates these base quotas to be in effect for 2012. NMFS would adjust these base quotas for the 2012 fishing year based on the best estimate of dead discards and information regarding over- or underharvests when the 2012 BFT quota specifications are prepared (likely in early 2012). As described below, 160 mt is used as a proxy for dead discards based on the 2009 estimate, which is the latest and best available estimate.

2011 Quota Specifications

In recommendations that applied from 1999 through 2006, ICCAT historically recommended a deduction of 79 mt from the TAC as an allowance for dead discards, and the U.S. portion of this allowance was 68 mt. ICCAT recommendations from 2006 onward have neither included a recommended dead discard allowance nor specified a dead discard reporting methodology for compliance purposes. Nevertheless, the ICCAT-recommended TAC and U.S. quota are inclusive of dead discards. The United States accounts for this mortality as part of the domestic specification calculation process and reports dead discard estimates to ICCAT annually.

In 2007 through 2010, NMFS accounted for pelagic longline dead discards within the Longline category quota, and deducted the best available estimate of dead discards from the current year Longline base quota. In the quota specifications for these years, NMFS also carried forward the full amount of prior-year underharvest allowed by ICCAT and distributed the underharvest to: (1) Ensure that the Longline category has sufficient quota to operate during the fishing year after the required accounting for BFT dead discards; (2) maintain 15 percent of the 2010 U.S. quota in Reserve for potential transfer to other ICCAT Contracting Parties and other domestic management objectives, if warranted; and (3) provide the non-Longline quota categories a share of the remainder of the underharvest consistent with the allocation scheme established in the Consolidated HMS FMP. The amount of prior-year underharvest allowed to be carried forward to 2007 through 2010 was sufficient to provide the Longline category enough quota to operate after the required accounting for BFT dead discards.

Since dead discard estimates for 2010 are not yet available, the 2009 estimate of 160 mt is used as a proxy. Estimates of dead discards from other gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. Use of the 2009 estimate as a proxy is appropriate because it is the best available and most complete information NMFS currently has regarding dead discards. In accordance with the 2010 ICCAT recommendation, the United States must subtract 160 mt from its baseline allocation.

It is important to note that the ICCAT recommendation to limit the carrying forward of underharvest to 10 percent of a party's total allocation, combined with the level of dead discards in recent years, makes using the method employed in 2007 through 2010 impracticable for 2011 onward. The amount of underharvest that the United States may carry forward to 2011 (94.9 mt) is insufficient to cover dead discards (160 mt). Deducting the dead discards from the Longline category (with a baseline subquota of less than 75 mt) would result in a subquota of 0 mt for the Longline category in 2011 and the need for reduction of the directed fishing category subquotas and the Reserve to make up the difference (i.e., about 85 mt). The Longline category baseline quota allocation (currently 8.1 percent of the baseline annual U.S. BFT quota) may need to be revisited in the future, although adjustments to the FMP-based allocation scheme would require an amendment to the Consolidated HMS FMP.

To establish the 2011 quota specifications, NMFS would subtract the dead discard estimate of 160 mt from the U.S. baseline quota of 923.7 and add the 94.9 mt of underharvest allowed to be carried forward, for an adjusted total of 858.6 mt. NMFS then would apply the allocation scheme established in the Consolidated HMS FMP to the adjusted total (as shown in the final column of the table below) and described here. Thus, in accordance with the ICCAT Recommendation 10–03, the Consolidated HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(10), NMFS proposes domestic category quotas for the 2011 fishing year as follows: General category—404.4 mt; Harpoon category—33.5 mt; Purse Seine category—159.7 mt; Angling category—169.1 mt; Longline category—69.5 mt; and Trap category—0.9 mt. The amount allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers would be 21.5 mt.

The proposed General category quota of 404.4 mt would be divided into the time period allocations established in the Consolidated HMS FMP. Thus, 21.4 mt (5.3 percent) would be allocated to the General Category for the period beginning January 1, 2011, and ending January 31, 2011; 202.2 mt (50 percent) for the period beginning June 1, 2011, and ending August 31, 2011; 107.2 mt (26.5 percent) for the period beginning September 1, 2011, and ending September 30, 2011; 52.6 mt (13 percent) for the period beginning October 1, 2011, and ending November 30, 2011; and 21 mt (5.2 percent) for the period beginning December 1, 2011, and ending December 31, 2011.

The Angling category quota of 169.1 mt would be further subdivided, pursuant to the area subquota allocations established in the Consolidated HMS FMP, as follows: School BFT—94.9 mt, with 36.5 mt to the northern area (north of 39°18′ N. latitude), 40.8 mt to the southern area (south of 39°18′ N. latitude), plus 17.6 mt held in reserve; large school/small medium BFT—70.4 mt, with 33.2 mt to the northern area and 37.2 mt to the southern area; and large medium/giant BFT—3.9 mt, with 1.3 mt to the northern area and 2.6 mt to the southern area.

The Longline category would be subdivided in accordance with the North/South allocation percentages (i.e., no more than 60 percent to the south of 31° N. latitude) in the Consolidated HMS FMP. Thus, the proposed Longline category quota of 69.5 mt would be subdivided as follows: 27.8 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 41.7 mt to pelagic longline vessels landing BFT south of 31° N. latitude. NMFS would account for landings under the 25-mt NED allocation separately from other Longline category landings.

PROPOSED ATLANTIC BLUEFIN TUNA QUOTAS AND QUOTA SPECIFICATIONS (IN METRIC TONS) FOR THE 2011 FISHING YEAR

[January 1–December 31, 2011]

Category (% share of baseline quota)	Baseline allocation for 2011 and 2012 (per 2010 ICCAT recommendation and consolidated HMS FMP allocations)	2011 Quota specifications		
		Dead discard deduction (2009 proxy)	2010 underharvest to carry forward 2011	2011 fishing year quota
Total (100)	923.7	−160.0	+94.9	858.6
Angling (19.7)	182.0 SUBQUOTAS: School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 82.9 North 39.1 South 43.8 Trophy 4.2 North 1.4 South 2.8			169.1 SUBQUOTAS: School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 70.4 North 33.2 South 37.2 Trophy 3.9 North 1.3 South 2.6
General (47.1)	SUBQUOTAS: Jan 23.1 Jun–Aug 217.6 Sept 115.3 Oct–Nov 56.6 Dec 22.6			SUBQUOTAS: Jan 21.4 Jun–Aug 202.2 Sept 107.2 Oct–Nov 52.6 Dec 21.0
Harpoon (3.9)	36.0			33.5
Purse Seine (18.6)	171.8			159.7
Longline (8.1)	74.8 SUBQUOTAS: North (-NED) 29.9 NED 25.0* South 44.9			69.5 SUBQUOTAS: North (-NED) 27.8 NED 25.0* South 41.7
Trap (0.1)	0.9			0.9
Reserve (2.5)	23.1			21.5

* 25 mt to account for bycatch of BFT in pelagic longline fisheries in the NED. Not included in totals at top of table.

Reinstatement of NED Target Catch Requirements

NMFS has implemented a series of management measures designed to regulate the incidental catch of BFT in non-directed Atlantic fisheries. Target catch requirements for the retention of BFT have been in effect for the pelagic longline fishery since 1981 (46 FR 8012, January 26, 1981) and are currently as follows: One large medium or giant BFT (*i.e.,* measuring 73 inches or greater) per vessel per trip may be landed, provided that at least 2,000 lb of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold; two large medium or giant BFT may be landed incidentally to at least 6,000 lb of species other than BFT; and three large medium or giant BFT may be landed incidentally to at least 30,000 lb of species other than BFT (68 FR 32414, May 30, 2003).

Pursuant to a 2001 Biological Opinion, NMFS closed the NED in July 2002 to HMS-permitted pelagic longline vessels and conducted a research experiment in this area on various pelagic longline gear modifications to reduce sea turtle bycatch and bycatch mortality in the pelagic longline fishery (67 FR 45393, July 9, 2002). The NED is the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 60°00′ W. long. This fishing ground covers virtually the entire span of the western north Atlantic, as far east as the Azores and the Mid-Atlantic Ridge.

The regulations were adjusted to allow vessels to fish in the NED if they met specific gear requirements and practiced safe handling and release of sea turtles during the research experiment. Beginning in November 2003, these vessels were allowed to retain all commercial-sized (large medium and giant) BFT taken incidental to fishing for other species while in that area, up to the 25-mt NED allocation with no attendant target catch requirement (68 FR 56788, October 2, 2003). However, after the research experiment was completed and the NED reopened, NMFS did not reinstate the target catch requirements. Under the current regulations, it is only once the 25-mt allocation is met that the target catch requirements apply in the NED.

From 2004 until 2009, NED landings were less than the available quota for that area (25 mt), despite the lack of

NED target catch requirements. In 2009, the 25-mt NED allocation was met during the fishing year, while northern area longline activity was ongoing. As a result, the bluefin tuna target catch requirements specified for the longline category became applicable in the NED from October 20–December 31, 2009 (74 FR 53671, October 20, 2009).

NMFS proposes to reinstate target catch requirements for pelagic longline vessels fishing in the NED. This action would effectively remove the exemption from target catch requirements that has applied in the NED since November 2003. NMFS would remove the provision that allows unlimited retention of commercial-sized BFT taken incidental to fishing for other species in the NED up to the amount allocated for the NED (currently 25 mt). Instead, the same target catch requirements (described in the first paragraph of this section) would apply in all areas (*i.e.,* both inside and outside of the NED).

Reinstating the target catch requirements in the NED would result in the same target catch requirements applying to all Longline category participants regardless of where they fish. Over the last several years, many individuals and environmental organizations have expressed concern that the lack of target catch requirements in the NED provides economic incentive to increase fishing effort to retain BFT in what is intended to be an incidental fishery. This action would help NMFS align BFT catch (landings and discards) with available quotas. In 2009, approximately 51 mt of BFT were landed from the NED, and total landings were 131 mt, 31 percent greater than the total 100 mt (landings quota) available for the Longline category. Constraining Longline category BFT landings to its quota serves to allow the fleet to continue to participate in their directed fisheries (*e.g.,* Atlantic yellowfin tuna (YFT) and swordfish) year-round with less risk of fishery interruption due to insufficient BFT quota availability. Further, it would reduce the need for BFT quota reallocation from directed fisheries or the Reserve to cover excess pelagic longline BFT landings. To address similar issues, as well as to increase the survival of spawning BFT, NMFS published a proposed rule to require weak hook use in the Gulf of Mexico pelagic longline fishery (76 FR 2313, January 13, 2011), and final rulemaking is forthcoming. Both of these efforts regarding the pelagic longline fishery are consistent with the agency's efforts to address bycatch issues and manage BFT catch and landings within available quotas.

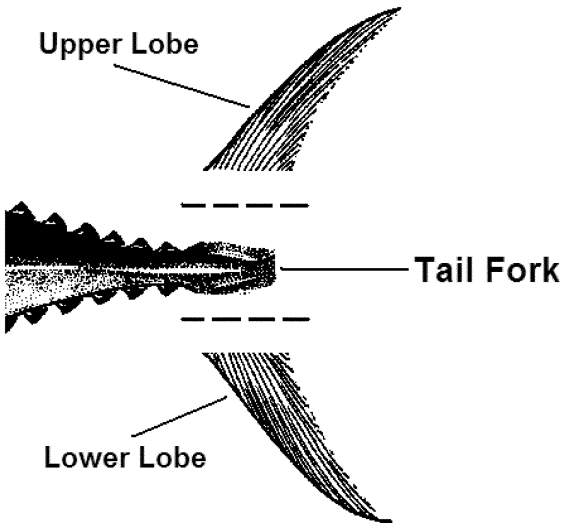
Atlantic Tunas Possession at Sea and Landing Form

The sole criterion for determining the size and/or size class of whole or round (head on) Atlantic tunas is a curved fork length (CFL) measurement, which is the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

When the head of an Atlantic tuna is removed, pectoral fin curved fork length (PFCFL) is the legal means of measuring the fish. PFCFL is the length of a fish measured from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel. The fork of the tail must be attached to the fish to attain proper CFL and PFCFL measurements. For a BFT with the head removed, the CFL is determined by multiplying the PFCFL by a conversion factor of 1.35. The resulting CFL is the sole criterion for determining the size class of a BFT with the head removed. For a bigeye or yellowfin tuna, NMFS prohibits the removal of the head if the remaining portion would be less than 27 inches from the fork of the tail to the forward edge of the cut.

The regulations regarding possession at sea and landing specify that managed Atlantic tunas landed in an Atlantic coastal port must be maintained through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached. NMFS has received requests from commercial Atlantic tuna fisheries participants in the last few years, including via the HMS Advisory Panel, to allow removal of Atlantic tuna tails at sea to make fish storage more efficient. NMFS proposes to clarify the regulations regarding Atlantic tunas possession at sea and landing to specify that as long as the fork of the tail remains intact, the upper and lower lobes of the tail may be removed (as shown in the figure below). This would balance the need for maintaining a standardized method of measuring Atlantic tunas with the request to allow Atlantic tunas to be stored at sea in a more efficient manner. This rulemaking will not affect the measurement methodology or requirements for species other than Atlantic tunas.

Figure 1. Depiction of allowed removal of the upper and lower lobes of the tail, leaving the fork of the tail intact to preserve the ability to obtain a curved fork length measurement.



Atlantic Tunas Transfer at Sea

Currently, the regulations regarding transfer at sea specify that, with a specific exception for owners and operators of a vessel for which a Purse Seine category Atlantic Tunas category permit has been issued, persons may not transfer an Atlantic tuna in the Atlantic Ocean, regardless of where the fish was harvested. Following a recent NOAA Administrative Law Judge decision involving the transfer of a BFT at sea [In the Matter of Brant McMullan & Roger A. Gales, Docket No. SE0900591FM (December 7, 2010)], NMFS has decided to clarify the intent of the Atlantic tunas transfer-at-sea regulations and prohibitions. NMFS proposes to add a sentence to the regulatory text regarding transfer at sea of Atlantic tunas that would read: "Notwithstanding the definition of "harvest" at § 600.10, for the purposes of this part, transfer includes, but is not limited to, moving or attempting to move an Atlantic tuna that is on fishing gear in the water from one vessel to another vessel." In the future, NMFS may make similar clarifications regarding transfer at sea for other Atlantic highly migratory species via separate actions pertaining to those species.

Request for Comments

NMFS solicits comments on this proposed rule through April 14, 2011. See instructions in **ADDRESSES** section above.

The public hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin at (978) 281–9279, at least 7 days prior to the hearing date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A summary of the analysis follows. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to analyze the impacts of the alternatives for implementing and allocating the ICCAT-recommended U.S. quota for 2011 and 2012; adjusting the 2011 U.S. quota and subquotas to account for BFT dead discards and unharvested 2010 quota allowed by ICCAT to be carried forward to 2011; reinstating pelagic longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area; amending the Atlantic tunas possession at sea and landing regulations to allow removal of tail lobes; and clarifying the transfer at sea regulations for Atlantic tunas.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to implement ICCAT recommendations, including accounting for BFT dead discards and underharvest of the 2010 adjusted quota in the 2011 quota specifications, implement uniform target catch requirements for Longline category participants regardless of where they fish, and clarify the regulations concerning Atlantic tunas possession at sea and landing and Atlantic tunas transfer at sea.

Section 603(b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The proposed quota action would apply to all participants in the Atlantic BFT fisheries, all of which are considered small entities, because they either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small

Business Administration (SBA) size standards for defining a small versus large business entity in this industry. This action would apply to all participants in the Atlantic BFT fishery, all of which are considered small entities. As shown in Table 5 of the IRFA, there are over 32,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic tunas permit as of October 2010. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats.

Reinstatement of target catch requirements in the NED would affect those Longline category permitted vessels that fish in the NED. As shown in Table 9 of the IRFA, over the last 5 years, an annual total ranging from 6 to 10 vessels have reported trips in the NED and an annual total ranging from 4 to 8 vessels have landed BFT from the NED. However, to the extent that this action could avoid the need for fishery interruption due to insufficient BFT quota availability, it could affect all 248 Longline category permitted vessels.

Clarification of the Atlantic tunas landing form and transfer at sea regulations would be informative to owners and operators of Atlantic tunas permitted vessels and Atlantic HMS permitted vessels fishing for tunas, although material impacts are not expected to occur from the related changes in this action.

Under section 603(b)(4) of the Regulatory Flexibility Act, agencies are required to describe any new reporting, recordkeeping and other compliance requirements. There are no new reporting or recordkeeping requirements in any of the alternatives considered for this action.

Under section 603(b)(5) of the Regulatory Flexibility Act, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

Under section 603(c) of the Regulatory Flexibility Act, agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in the EA. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with Magnuson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternative to achieve the desired objective. The alternatives considered and analyzed are described below. The IRFA assumes that each vessel within a category will have similar catch and gross revenues to show the relative impact of the proposed action on vessels.

NMFS has estimated the average impact that the alternative to establish the 2011 and 2012 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2010 ICCAT recommendation reduced the U.S. baseline BFT quota for 2011 and 2012 to 923.7 mt and provides 25 mt for incidental catch of BFT related to directed longline fisheries in the NED. This action would distribute the baseline quota of 923.7 mt to the domestic fishing categories based on the allocation percentages established in the Consolidated HMS FMP.

In 2010, the annual gross revenues from the commercial BFT fishery were approximately $8.9 million. As of October 2010, there were 8,311 vessels permitted to land and sell BFT under four commercial BFT quota categories (including charter/headboat vessels). The commercial categories and their 2010 gross revenues are General ($7.8 million), Harpoon ($202,643), Purse Seine ($0), and Longline ($878,908).

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative and Alternative A2 (preferred alternative), which would implement the 2010 ICCAT recommendation. NMFS considered a third alternative (A3) that would have allocated the 2010 ICCAT recommendation in a manner other than that designated in the Consolidated HMS FMP. Alternative A3 would result in a de facto quota reallocation among categories, and an FMP amendment would be necessary for its implementation. Preparation of an FMP amendment is not possible in the brief period of time between receipt of the ICCAT recommendation, which occurred in late November 2010, and the 2011 fishing year, the bulk of which begins in June. Therefore, Alternative A3 was not analyzed. But, if an FMP amendment was feasible, positive economic impacts would be expected to result on average for vessels in permit categories that would receive a greater share than established in the FMP, and negative economic impacts would be expected to result on average for vessels in permit categories that would receive a lesser share than established in the FMP. Impacts per vessel would depend on the temporal and spatial availability of BFT to participants.

As noted above, Alternative A2 would implement the 2010 ICCAT recommendation in accordance with the Consolidated HMS FMP and consistent with ATCA, under which the United States is obligated to implement ICCAT-approved quota recommendations, as necessary and appropriate. The preferred alternative would implement this quota and have slightly positive impacts for fishermen. The no action alternative would keep the quota at pre-2010 ICCAT recommendation levels (approximately 29 mt more) and would not be consistent with the purpose and need for this action, the Consolidated HMS FMP, and ATCA. The economic impacts to the United States and to local economies would be similar in distribution and scale to 2010 (e.g., annual commercial gross revenues of approximately $8.9 million, as described above), or recent prior years, and would provide fishermen additional fishing opportunities, subject to the availability of BFT to the fishery, in the

short term. In the long term, however, as stock growth is hindered, negative impacts would result.

It is difficult to estimate average potential ex-vessel revenues to commercial participants, largely because revenues depend heavily on the availability of large medium and giant BFT to the fishery. Section 6 of the EA/RIR/IRFA describes potential revenue losses per commercial quota category based on each category's proposed base quota reduction and price-per-pound information from 2010 (*i.e.,* $206,251 for the General category, $13,944 for the Harpoon category, $25,150 for the Longline category, and $1,093 for the Trap category); although the Purse Seine category had no BFT landings in 2010, potential revenue losses of $69,639 were estimated. As described in Section 4 of the EA/RIR/IRFA, because the directed commercial categories have underharvested their subquotas in recent years, particularly 2004–2008, the potential decreases in ex-vessel revenues above overestimate the probable economic impacts to those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues per category in recent years due to recent changes in BFT availability and other factors. Generally, the interannual differences in ex-vessel revenues per category have been larger than the potential impacts described above.

Data on net revenues of individual fishermen are lacking, so the economic impact of the alternatives is averaged across each category. This is an appropriate approach for BFT fisheries, in particular because available landings data (weight and ex-vessel value of the fish in price-per-pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (*e.g.,* the cost of gas, bait, ice, etc.), so net revenue for each participant cannot be calculated. As a result, NMFS analyzes the average impact of the proposed alternatives among all participants in each category.

Success rates vary widely across participants in each category (due to extent of vessel effort and availability of commercial-sized BFT to participants where they fish) but for the sake of estimating potential revenue loss per vessel, category-wide revenue losses can be divided by the number of permitted vessels in each category. Because HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits, Charter/Headboat permitted vessels are considered along with General category vessels when estimating potential General category ex-vessel revenue changes. Potential ex-vessel revenue losses are estimated as follows: General category (including Charter/Headboat vessels): $26; Harpoon category: $480; Longline category (incidental): $101; Trap category (incidental): $182; and Purse Seine category: $13,928. Section 6 of the EA/RIR/IRFA describes potential revenue losses per commercial quota category based on each category not having access to quota that would be available through the carrying forward of 2010 underharvest, were it not for the ICCAT recommendation that limits the amount that may be carried forward to 10 percent of a Contracting Party's total quota beginning effective for 2011. Potential ex-vessel revenue losses resulting from this change are estimated as follows: General category (including Charter/Headboat vessels): $107; Harpoon category: $4,808; Longline category (incidental): $1,014; Trap category (incidental): $519; and Purse Seine category: $139,278. These values likely overestimate potential revenue losses for vessels that actively fish and are successful in landing at least one BFT.

The proposed reinstatement of target catch requirements for pelagic longline vessels in the NED could, as described in Section 6.6.2 of the IRFA, result in a potential loss of $341,228. If this reduction is calculated for the universe of vessels participating in the NED over the last 5 years (range of 6–10 vessels), it would represent average potential ex-vessel reductions of $34,123–$56,871 per vessel. If the reduction is calculated across Longline category vessels, it would be $1,376 per vessel. In Section 6.6.2 of the IRFA, acknowledging that the 2009 number of BFT taken in the NED in 2009 may have been anomalous, NMFS also provided a figure for potential revenue loss of $42,408. This would represent average potential ex-vessel reductions of $4,241–$7,068 per vessel. If the reduction is calculated across Longline category vessels, it would be $171 per vessel.

However, the preferred alternative is expected to result in the most positive short and long-term socio-economic impacts for the majority of BFT fishery participants, including Longline category participants, as it would increase the likelihood that the Longline category quota will be available through the end of the year, without interruption, and decrease the potential need for reallocation from directed quota categories or quota reductions in subsequent years to cover Longline category excesses.

The other considered alternative was a no action alternative (maintaining the de facto exemption from target catch requirements for pelagic longline vessels fishing in the NED). The no action alternative risks exceeding the available Longline category quota, particularly in years where availability of commercial-sized BFT is high in the NED during directed pelagic longline activity for target species.

The modifications to the regulations concerning Atlantic tunas possession and landing form and Atlantic tunas transfer at sea are intended to facilitate Atlantic tunas storage and provide clarification, respectively. While these changes would apply to all vessels holding Atlantic tunas, HMS Charter/Headboat, and HMS Angling category permits (totaling approximately 33,000 vessels), they are not expected to have significant economic impacts. Therefore, NMFS has not analyzed alternatives beyond the preferred alternatives and no action. Specific estimates of economic impacts of these preferred alternatives are not quantifiable.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 9, 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 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

§ 635.23 [Amended]

2. In § 635.23, remove paragraph (f)(3).

3. In § 635.27, paragraphs (a) introductory text, (a)(1)(i), (a)(2), (a)(3), (a)(4)(i), (a)(5), (a)(7)(i), and (a)(7)(ii) are revised to read as follows:

§ 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make

the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories. BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The baseline annual U.S. BFT quota is 923.7 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. The baseline annual U.S. BFT quota is divided among the categories as follows: General—47.1 percent (435.1 mt); Angling—19.7 percent (182.0 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (36.0 mt); Purse Seine—18.6 percent (171.8 mt); Longline—8.1 percent (74.8 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap—0.1 percent (0.9 mt). The remaining 2.5 percent (23.1 mt) of the baseline annual U.S. BFT quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT quotas are specified in whole weight.

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 47.1 percent (435.1 mt) of the baseline annual U.S. BFT quota, and is apportioned as follows:

(A) January 1 through January 31—5.3 percent (23.1 mt);

(B) June 1 through August 31—50 percent (217.6 mt);

(C) September 1 through September 30—26.5 percent (115.3 mt);

(D) October 1 through November 30—13 percent (56.6 mt); and

(E) December 1 through December 31—5.2 percent (22.6 mt).

* * * * *

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (182 mt) of the baseline annual U.S. BFT quota. No more than 2.3 percent (4.2 mt) of the annual Angling category quota may be large medium or giant BFT. In addition, over each 2-consecutive-year period (starting in 2011, inclusive), no more than 10 percent of the annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (40.8 mt) of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining school BFT Angling category quota (36.5 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(ii) An amount equal to 52.8 percent (43.8 mt) of the large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large school/small medium BFT Angling category quota (39.1 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(iii) An amount equal to 66.7 percent (2.8 mt) of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large medium and giant BFT Angling category quota (1.4 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent (74.8 mt) of the baseline annual U.S. BFT quota. No more than 60.0 percent (44.9 mt) of the Longline category quota may be allocated for landing in the area south of 31°00′ N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area.

(4) * * *

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 18.6 percent (171.8 mt) of the baseline annual U.S. BFT quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the Federal Register prior to July 1. The Purse Seine category fishery closes on December 31 of each year.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 3.9 percent (36.0 mt) of the baseline annual U.S. BFT quota. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

* * * * *

(7) * * *

(i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (23.1 mt) of the baseline annual U.S. BFT quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (17.6 mt) of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

* * * * *

4. In § 635.29, paragraph (a) is revised to read as follows:

§ 635.29 Transfer at sea.

(a) Persons may not transfer an Atlantic tuna, blue marlin, white marlin, roundscale spearfish, or swordfish at sea in the Atlantic Ocean, regardless of where the fish was

harvested. Notwithstanding the definition of "harvest" at § 600.10, for the purposes of this part, transfer includes, but is not limited to, moving or attempting to move an Atlantic tuna that is on fishing gear in the water from one vessel to another vessel. However, an owner or operator of a vessel for which a Purse Seine category Atlantic Tunas category permit has been issued under § 635.4 may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which a Purse Seine category Atlantic Tunas permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

* * * * *

5. In § 635.30, paragraph (a) is revised to read as follows:

§ 635.30 Possession at sea and landing.

(a) *Atlantic tunas.* Persons that own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached. The upper and lower lobes of the tuna tail may be removed for storage purposes as long as the fork of the tail remains intact.

* * * * *

[FR Doc. 2011–5858 Filed 3–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BA35

Fisheries Off West Coast States; Highly Migratory Species Fisheries; Amendment 2

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 2 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) for Secretarial review. Amendment 2 would modify the current suite of management unit species, establish a new category of ecosystem component species, modify the process for revising numerical estimates of maximum sustainable yield and optimal yield, and specify status determination criteria so that overfishing and overfished determinations can be made for all management unit species.

DATES: Comments on Amendment 2 must be received on or before May 13, 2011.

ADDRESSES: You may submit comments on the NOA identified by "RIN 0648–BA35", by any of the following methods:

- *Federal e-Rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.
- *Fax:* (562) 980–4047.

Instructions: All comments received are part of the public record and generally will be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name and 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 (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. Copies of the draft EA and RIR prepared for this proposed rule are available at *http://swr.nmfs.noaa.gov/* or may be obtained from Rodney R. McInnis (*see* **ADDRESSES**).

Copies of Amendment 2, which includes an Environmental Assessment/Regulatory Impact Review, are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, NMFS, at 760–431–9440, ext. 303 or Kit Dahl, Pacific Fishery Management Council, at 503–820–2422.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (MSA), 18 U.S.C. 1801 *et seq.,* requires each regional fishery management council to submit any amendment to an FMP to NMFS for review and approval, disapproval, or partial approval. The MSA also requires that NMFS, upon receiving an amendment to an FMP, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the public comment period in determining whether to approve, disapprove, or partially approve Amendment 2.

Amendment 2 would revise the HMS FMP to ensure it is consistent with advisory guidelines published at 50 CFR 600.310. The guidelines describe fishery management approaches to meet the objectives of National Standard 1 (NS1) of the MSA, Section 301. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) amended the MSA to include new requirements for annual catch limits (ACLs) and accountability measures (AMs) and other provisions regarding preventing and ending overfishing and rebuilding fisheries. NMFS revised NS1 Guidelines in response to these changes in the MSA. The NS1 Guidelines were published in the **Federal Register** on January 16, 2009. The Guidelines are intended to meet the objectives of NS1 by providing guidance on:

1. Specifying maximum sustainable yield (MSY) and optimal yield (OY);

2. Specifying status determination criteria (SDC) so that overfishing and overfished determinations can be made for stocks and stock complexes that are part of a fishery;

3. Preventing overfishing and achieving OY, incorporation of scientific and management uncertainty in control rules, and adaptive management using ACLs and measures to ensure accountability (AM); and

4. Rebuilding stocks and stock complexes.

The revisions to the NS1 guidelines also dictate that fisheries undergoing overfishing have ACLs and AMs in place to end overfishing by 2010, and all fisheries to have ACLs and AMs in place to prevent or end overfishing by 2011, and beyond. However, a stock or stock complex may not require an ACL and AMs if it qualifies for an MSRA-defined exception. The most important of these with respect to highly migratory species is the so-called "international exception" described at § 660.310(h)(2)(ii) for stocks managed under an international agreement to which the United States is a party. The NS1 Guidelines also have other provisions related to classifying stocks in the FMP.

In November 2009 the Council reviewed the Highly Migratory Species Management Team's (Management Team) recommendations on the range of issues related to amending the HMS FMP and provided further guidance on developing alternatives based on the following topics:

(1) Classification of stocks in the HMS FMP as management unit species or ecosystem component species;

(2) Potential application of the MSRA international exception for ACL requirements to management unit species in the HMS FMP;

(3) Determining the primary fishery management plan for managed species covered by both the HMS FMP and the Western Pacific Fishery Management Council's Pelagics Fishery Ecosystem Plan; and

(4) Establishing biological reference points and accountability measures.

At their April 2010 meeting, the Council adopted a set of alternatives for public review that were made available in the form of a preliminary draft environmental assessment. At the June 2010 meeting the Council took final action to adopt the preferred alternative, addressing the four issue areas listed above in the following manner: Bigeye thresher, *Alopias superciliosus,* and pelagic thresher, *A. pelagicus,* would be reclassified as ecosystem component species resulting in a total of 11 management unit species versus the current 13 management unit species under status quo. Based on these considerations there would be eight ecosystem component species included in the HMS FMP, including the two thresher shark species that are currently management unit species.

The international exception to setting ACLs described at § 660.310(h)(2)(ii) would be applied to all management unit species because they are subject to management by the Inter-American Tropical Tuna Commission, of which the U.S. is a member. The HMS FMP would be amended to discuss the process by which NMFS would make a determination of the primary FMP in consultation with the Western Pacific Fishery Management Council. The determination will be based on the stock, or portion of the stock (if stock structure is poorly understood and catch data is limited), for which reference points will be identified. The existing numerical estimates of MSY (or proxies), OY, and SDC, including the overfishing limit, would be retained. Upon the receipt of any new information based on the best available science, the Council may periodically adjust the numerical estimates of MSY, OY, and SDC. The adjustment would follow an established protocol whereby the HMSMT proposes MSY and OY estimates based on the best available science, which are included in the draft HMS Stock Assessment and Fishery Evaluation (SAFE) document submitted to the Council in June. The Council's Science and Statistical Committee would review the estimates and make a recommendation on their suitability for management. The Council would then decide whether to adopt updated numerical estimates of MSY and OY, which would be submitted as recommendations for NMFS to review as part of the management cycle process. This provides the opportunity for Secretarial review of revised MSY and OY estimates. In this process the Council would take final action in November and then NMFS would engage in rulemaking to implement the specifications and any management measures proposed by the Council.

The Council has submitted a proposed rule to implement Amendment 2 for Secretarial review. NMFS expects to publish and request public comment on the proposed rule in the near future.

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

Dated: March 9, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–5868 Filed 3–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648–AY33

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program; Amendment 34

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

ACTION: Notice of availability of a proposed amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs to NMFS for review. If approved, Amendment 34 would amend the Bering Sea and Aleutian Islands Crab Rationalization Program to exempt additional recipients of crab quota share from Gulf of Alaska Pacific cod and pollock harvest limits, called sideboards, which apply to some vessels and license limitation program licenses that are used to participate in these fisheries. The North Pacific Fishery Management Council determined that these additional recipients demonstrated a sufficient level of historical participation in Gulf of Alaska Pacific cod or pollock fisheries, and that they should be exempt from the current sideboards. This action is necessary to give these recipients an opportunity to participate in the Gulf of Alaska Pacific cod and pollock fisheries at historical levels. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable laws.

DATES: Comments on the amendment must be submitted on or before May 13, 2011.

ADDRESSES: Send comments to Dr. James Balsiger, Regional Administrator, Alaska Region, NMFS, *Attn:* Ellen Sebastian. You may submit comments, identified by "RIN 0648–AY33," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* P. O. Box 21668, Juneau, AK 99802.
- *Fax:* 907–586–7557.
- *Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted 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 wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner

Crabs, the Environmental Assessment, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The Environmental Impact Statement, Regulatory Impact Review, Final Regulatory Flexibility Analysis, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 34 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the Crab FMP. The groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska. The North Pacific Fishery Management Council (Council) prepared the Crab FMP and the Fishery Management Plan for Groundfish of the Gulf of Alaska under the Magnuson-Stevens Act. Amendments 18 and 19 amended the Crab FMP to include the Bering Sea and Aleutian Islands Crab Rationalization Program (CR Program). Regulations implementing Amendments 18 and 19 were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680. Regulations governing GOA groundfish fisheries are located at 50 CFR part 679.

The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The CR Program is a limited access privilege program for nine BSAI crab fisheries, in which participants receive exclusive harvesting and processing privileges for a portion of the total allowable catch (TAC) assigned to each crab fishery in the CR Program.

Under the CR Program, persons received quota share (QS) based on their historical participation in one or more of the CR Program crab fisheries during a specific time period. Quota share represents an exclusive but revocable privilege to receive an annual allocation to harvest a specific percentage of the TAC from a CR Program fishery. NMFS allocated QS to eligible harvesters in 2005, prior to the first year of crab fishing under the CR Program. Each year, a person who holds crab QS and submits a timely and complete crab permit application to NMFS receives an exclusive harvest privilege for a portion of the annual TAC for that crab fishery. This harvest privilege, called individual fishing quota (IFQ), is the annual allocation of pounds of crab for harvest that represent a QS holder's percentage of the TAC. Crab QS holders may form voluntary crab harvesting cooperatives to combine and cooperatively manage their aggregate QS holdings. Each cooperative that is approved by NMFS receives the amount of cooperative IFQ yielded by the aggregate QS holdings of all of the members of the cooperative.

The Council anticipated that crab harvesting cooperatives would significantly increase operating flexibility for crab fishermen because they could choose when and where to fish for IFQ. Crab fishermen in cooperatives also could potentially reduce costs by harvesting crab IFQs on fewer vessels during an extended season. The Council was concerned that increased flexibility for BSAI crab fishermen could give them an incentive to increase effort in other fisheries, which could economically disadvantage other participants in these fisheries.

The Council developed sideboards to prevent Bering Sea snow crab (*Chionoecetes opilio*) quota share recipients from increasing their participation in GOA groundfish fisheries, particularly in the GOA Pacific cod fishery. However, in order to enable those Bering Sea snow crab quota share recipients who also had significant participation in, or dependence on, the GOA Pacific cod fishery to maintain historical participation levels, the Council exempted certain qualified vessels and license limitation program (LLP) licenses from the GOA Pacific cod sideboard.

The CR Program's GOA groundfish sideboards were implemented in 2006. Under current regulations, CR Program sideboard limits apply to vessels that: (1) Harvest any species of GOA groundfish with the exception of sablefish harvested with fixed gear; (2) are not authorized to conduct directed fishing for pollock under the American Fisheries Act (AFA) of 1998 (Public Law 105–277, Title II of Division C); and (3) meet one or both of the following criteria: (a) Made a legal landing of Bering Sea snow crab between January 1, 1996, and December 31, 2000, that generated any amount of Bering Sea snow crab QS; or (b) are named on a GOA groundfish LLP license that was generated by the fishing history of a vessel that also generated Bering Sea snow crab QS. Vessels that meet these criteria subsequently will be referred to as "non-AFA crab vessels." The CR Program did not establish sideboard limits for AFA vessels with historical participation in the Bering Sea snow crab fishery because these vessels are subject to GOA harvesting and processing restrictions under the AFA and in implementing regulations for the AFA (50 CFR 679.64(b)).

The Council primarily intended GOA groundfish sideboards to restrict vessels with Bering Sea snow crab catch history. However, the Council determined that, because LLP licenses are transferable, GOA groundfish sideboard limits should also apply to GOA groundfish LLP licenses derived from vessels with catch history that also generated Bering Sea snow crab QS. The LLP was implemented in 2000 to limit the number, size, and operation type (gear designation) of vessels that may be deployed in the groundfish fisheries in the exclusive economic zone of the BSAI and GOA, and in crab fisheries in the BSAI. Regulations require, with limited exceptions, that a vessel must be named on a legible copy of a valid LLP license that is on board the vessel in order to participate in a directed fishery for LLP species. NMFS issued LLP licenses based on the catch history of a vessel in specific fisheries (i.e., a vessel's qualifying catch history generated an LLP license). The Council extended the CR Program GOA groundfish sideboards to GOA groundfish LLP licenses derived from vessels with catch history that also generated Bering Sea snow crab quota to prevent crab QS recipients from circumventing the GOA groundfish sideboards by transferring an LLP license for use on a vessel that is not subject to the sideboards. Thus, any vessel named on a GOA groundfish LLP license that was generated by the GOA groundfish catch history of a non-AFA vessel that also generated Bering Sea crab QS is subject to the CR Program GOA non-AFA groundfish sideboards,

even if the vessel named on the LLP license did not have historical landings that generated Bering Sea snow crab QS.

While most vessels and LLP licenses with catch history that generated Bering Sea snow crab QS are subject to the CR Program sideboard limits in GOA groundfish fisheries, some are exempt from the GOA Pacific cod sideboard. The Council established an exemption from the GOA Pacific cod sideboard limits for non-AFA crab vessels that demonstrated minimal participation in, or dependence on, the Bering Sea snow crab fishery and sufficient participation in, or dependence on, the GOA Pacific cod fishery from 1996 through 2000. Non-AFA crab vessels that are exempt from the GOA Pacific cod sideboard limits do not have to stop fishing for GOA Pacific cod when the sideboard limit is reached and may continue to fish as long as directed fishing for Pacific cod is open. The catch history of exempt participants is not included in the GOA Pacific cod non-AFA crab vessel sideboard limit calculations, and NMFS does not count the GOA Pacific cod catch of exempt vessels toward the non-AFA crab vessel sideboard limit.

Each year, NMFS calculates the non-AFA crab vessel sideboard limits for GOA groundfish species. The sideboard limit is calculated as a ratio of the amount of each groundfish species retained by non-AFA crab vessels from 1996 to 2000, relative to the total retained catch of each species by all vessels during the same period. This calculation yields a fixed ratio, or percentage, that is multiplied by the annual TAC for each GOA groundfish sideboard species to determine the non-AFA crab vessel sideboard limit (in metric tons) for GOA groundfish species.

NMFS opens directed fishing for a sideboard species for non-AFA crab vessels only when it determines that any directed fishery harvest for that species—and the incidental catch needs for that species by non-AFA crab vessels in other fisheries—would not exceed the sideboard limit. The CR Program GOA groundfish sideboard limits restrict the catch of non-AFA crab vessels in the aggregate. All targeted or incidental catch of a GOA groundfish sideboard species made by non-AFA crab vessels subject to the sideboard is deducted from the sideboard limit. NMFS closes directed fishing for vessels subject to a sideboard limit when NMFS determines that the remainder of a GOA groundfish sideboard limit is needed for incidental catch by non-AFA crab vessels in other fisheries.

Since 2006, NMFS has determined that only Pacific cod non-AFA crab vessel sideboard limits in two GOA management areas were large enough to open a directed sideboard fishery. Although NMFS opened directed fishing for Pacific cod for non-AFA crab vessels subject to the sideboard limit, the relatively small sideboard limit amounts prompted NMFS to close directed fishing for these vessels earlier than it closed directed fishing for vessels that were not subject to sideboard limits. All other GOA sideboard species, including pollock, have been closed to directed fishing by non-AFA crab vessels subject to the CR Program groundfish sideboard limits because the sideboard limits were determined by NMFS to be insufficient to support both directed and incidental catch needs for these vessels.

The Council was prompted to reexamine the CR Program GOA groundfish sideboard limits by non-AFA crab vessel operators who testified that some sideboard limits were too restrictive. These operators indicated that they had historically participated in GOA Pacific cod and pollock fisheries at levels that demonstrated sufficient dependence on these fisheries and had received Bering Sea crab quota share at levels that demonstrated minimal dependence on the Bering Sea snow crab fishery. Some Bering Sea snow crab QS recipients testified to the Council that the earlier closure of directed fishing for Pacific cod for non-AFA crab vessels subject to sideboard limits, as well as the complete closure of directed fishing for pollock for vessels subject to sideboard limits, represented a lost fishing opportunity for their vessels and thus, potential lost revenue from Pacific cod and pollock catch. Based on this public testimony and a review of the effects of the sideboard limits in the 2005/2006 and 2006/2007 crab fishing years, the first 2 years of the CR Program, the Council determined that the sideboard restrictions for the GOA Pacific cod and pollock fisheries should be re-examined. The Council initiated an analysis in December 2007 to examine alternatives that would expand the criteria for non-AFA crab vessels to qualify for an exemption from the Pacific cod sideboard limits and would extend a similar exemption to the pollock sideboard limits. In October 2008, the Council recommended Amendment 34 to the Crab FMP to exempt additional vessels and groundfish LLP licenses from the GOA Pacific cod and pollock sideboard limits.

Amendment 34 would implement two actions. Action 1 would revise the GOA Pacific cod sideboard limit exemption criteria for non-AFA crab vessels. Action 2 would establish new GOA pollock sideboard limit exemption criteria for non-AFA crab vessels. NMFS estimates that, in addition to the five vessels and five groundfish LLP licenses that are currently exempt, the Council's preferred alternative for Action 1 would exempt three non-AFA crab vessels and three groundfish LLP licenses from GOA Pacific cod sideboard limits, for an estimated total of eight vessels and eight LLP licenses that would be exempt from the GOA Pacific cod sideboard. For Action 2, NMFS estimates that the Council's preferred alternative would exempt one non-AFA crab vessel and one groundfish LLP license from the GOA pollock sideboard limits. Exemptions from the sideboard harvest limits would provide an opportunity for these crab QS recipients to participate in the GOA Pacific cod and pollock fisheries at historical levels. The Council determined that the potential increased participation by these participants in GOA Pacific cod and pollock fisheries was unlikely to significantly impact other participants in these fisheries.

The Regulatory Impact Review and Initial Regulatory Flexibility Analysis prepared for this action describes the costs and benefits of the proposed amendment (*see* **ADDRESSES**). All of the directly regulated entities would be expected to benefit from this action relative to the status quo because the proposed amendment would allow crab QS recipients with demonstrated dependence on GOA Pacific cod and pollock fisheries to participate in these fisheries at historical levels.

Public comments are being solicited on proposed Amendment 34 to the Crab FMP through the end of the comment period (*see* **DATES**). NMFS intends to publish in the **Federal Register**, and seek public comment on, a proposed rule that would implement Amendment 34, following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 34 (*see* **DATES**) to be considered in the approval/disapproval decision on Amendment 34. All comments received by the end of the comment period, whether specifically directed to Amendment 34 or the proposed rule, will be considered in the FMP approval/disapproval decision. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period. Comments received after that date will not be considered in the

approval/disapproval decision on the amendment.

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

Dated: March 9, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–5854 Filed 3–11–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 49
Monday, March 14, 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–2010–0078]

Availability of an Environmental Assessment and Finding of No Significant Impact for a Biological Control Agent for Hawkweeds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to the release of the hawkweed gall wasp, *Aulacidea subterminalis,* into the continental United States as a biological control agent to reduce the severity of infestations of hawkweeds (*Hieracium* spp.). Based on its finding of no significant impact, APHIS has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. Shirley A. Wager-Page, Chief, Pest Permitting Branch, Plant Health Programs, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1237; (301) 734–8453.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of the hawkweed gall wasp, *Aulacidea subterminalis,* into the continental United States for the biological control of hawkweeds (*Hieracium pilosella, H. aurantiacum, H. floribundum,* and *H. flagellare*).

On October 21, 2010, we published in the **Federal Register** (75 FR 64984–64985, Docket No. APHIS–2010–0078) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed release of this biological control agent into the continental United States.

We solicited comments on the EA for 30 days ending November 22, 2010. We received four comments, from a State agriculture department, a State conservation association, the U.S. Fish and Wildlife Service, and an anonymous commenter. Our responses to the issues raised in the comments can be found in Appendix 5 of the final EA (*see* footnote 1).

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the release of the hawkweed gall wasp into the continental United States for use as a biological control agent for the control of hawkweeds. The finding, which is based on the EA, reflects our determination that release of this biological control agent will not have a significant impact on the quality of the human environment.

The EA and FONSI may be viewed on the Regulations.gov Web site (*see* footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

[1] To view the notice, EA, FONSI, and response to comments, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0078.*

Done in Washington, DC, this 7th day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–5714 Filed 3–11–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for an Extension of a Currently Approved Information Collection; County Committee Elections

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on an extension of a currently approved information collection associated with the FSA County Committee Elections. The collection of information from FSA farmers and ranchers is used to receive nominations from eligible voters for the County Committee.

DATES: We will consider comments that we receive by May 13, 2011.

Additional Information: We invite you to submit comments on this Notice. In your comment, include volume, date and page number of this issue of the **Federal Register.** You may submit comments by any of the following methods:

Mail: Kenneth Nagel, Field Operations Manager for the Deputy Administrator for Field Operations, Farm Service Agency, USDA, STOP 0542, 1400 Independence Avenue, Washington, DC 20250.

E-mail: Send comments to: *Kenneth.nagel@wdc.usda.gov.*

Fax: (202) 720–6974.

Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth Nagel, Field Operations Manager, telephone (202) 720–7890.

SUPPLEMENTARY INFORMATION:

Title: County Committee Election.

OMB Control Number: 0560–0229.

Expiration Date of Approval: September 30, 2011.

Type of Request: Extension.

Abstract: This information collection is necessary to effectively allow farmers and ranchers to nominate potential candidates for the county committee election. FSA also requires reporting the participation rate of disadvantaged farmers and ranchers and the election result to USDA Secretary and the Congress, as specified in Soil Conservation and Domestic Allotment Act. Specifically, FSA county offices use the information annually or if needed through-out the year for special elections to create ballots for county committee elections.

FSA county offices compile information for ballots and reports from FSA–669A, Nomination Form for County FSA Committee Election, that an individual completes to nominate themselves or nominate any other person who is interested to serve on a FSA county committee, if eligible. The individuals also voluntarily specify their race, ethnicity, and gender on FSA–669A.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response. The average travel time, which is included in the total burden, is estimated to be 1 hour per respondent.

Respondents: Any individual with farming interest in the Local Administrative Area (LAA) (eligible voters).

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual of Responses: 10,000.

Estimated Total Annual Burden Hours: 6,700.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(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.

All responses received in response to this notice, including names and addresses, when provided, will be a matter of public records. Comments will be summarized and included in the request for Office of Management and Budget approval of the information collection.

Signed in Washington, DC on March 8, 2011.

Carolyn B. Cooksie,

Acting Administrator, Farm Service Agency.

[FR Doc. 2011–5770 Filed 3–11–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Funding Availability: Inviting Applications for McGovern-Dole International Food for Education and Child Nutrition Program's Micronutrient-Fortified Food Aid Products Pilot

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.608.

Summary: The Foreign Agricultural Service (FAS) announces it is inviting proposals for the McGovern-Dole International Food for Education and Child Nutrition (McGovern-Dole) Program Micronutrient-Fortified Food Aid Products Pilot (MFFAPP). Up to $9 million of funding is available for the MFFAPP. Eligible applicants may submit proposals through June 10, 2011. The MFFAPP is administered through FAS's McGovern-Dole International Food for Education and Child Nutrition (McGovern-Dole) Program.

Dates: All applications must be received by 5 p.m. Eastern Standard Time, June 10, 2011. Applications received after this date will not be considered.

For Further Information Contact: Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024; by phone: (202) 720–4221; by fax: (202) 690–0251; or by e-mail at *ppded@fas.usda.gov.*

Supplementary Information:

I. Funding Opportunity Description

A. *Authority:* The MFFAPP uses the authority of the McGovern-Dole Program, which is authorized by the Farm Security and Rural Investment Act of 2002, as amended.

B. *Purpose:* Under the MFFAPP, participants will have access to resources to introduce and field test new or improved micronutrient-fortified food aid products. FAS defines micronutrient-fortified food aid products as foods used for direct feeding that are nutritionally enhanced with vitamin or mineral additions to address the micronutrient deficiencies of a population or group. The food aid products must be designed to meet the energy and nutrient needs of populations served by the McGovern-Dole Program, including school-aged children, children under 5 years of age, pregnant and lactating mothers, and infants. The process of micronutrient fortification must take place in the United States and use U.S. origin products. The participant may develop a new product or improve an existing product, either directly or by contracting with another party. This pilot does not support field testing for products that already exist or have been recently developed.

Through this pilot, FAS hopes to identify new products that provide the most improvement in nutrition for the targeted beneficiaries in the most cost-effective manner. FAS will examine each proposal for its appropriateness to the beneficiary population and targeted country context, its intended impact on the nutrition of program beneficiaries, and the expected outcomes of the pilot project.

C. *Priorities:* 1. FAS is seeking to maximize the cost effectiveness of implementing this pilot. Therefore, FAS will give priority consideration to otherwise acceptable proposals that will develop and field test food aid products in conjunction with current or already-approved future activities under the McGovern-Dole Program in the following countries: Afghanistan, Angola, Bangladesh, Benin, Bolivia, Burkina Faso, Cambodia, Cameroon, Chad, Ethiopia, Guatemala, Guinea-Bissau, Haiti, Kenya, Lao PDR, Liberia, Madagascar, Malawi, Mali, Mozambique, Nepal, Nicaragua, Niger, Pakistan, Republic of Congo, Rwanda, Senegal, Sierra Leone, and Uganda.

2. FAS will also consider, but will give a lower priority to, proposals for projects to develop and field test food aid products, whether or not in conjunction with current or already-approved future activities under the McGovern-Dole Program, in countries other than those listed in Section I.C.1., provided that the project is short term and supports sustainability efforts and the country meets the following criteria:

a. Low or Lower Middle Income Country—according to World Bank data (2008 World Bank);

b. Greater than 20 percent prevalence of stunting (World Health Organization);

c. Adult literacy rate below 80 percent;

d. Government support for education;

e. Absence of civil conflict; and

f. FAS has a representative covering the country who can provide the ability for oversight of program activities.

3. If an applicant for funding under the MFFAPP proposes to develop and field test a food aid product in conjunction with the current or approved activities of another entity under the McGovern-Dole Program, the applicant must obtain the agreement of such entity that the applicant may develop and field test the food aid product in conjunction with its activities. The applicant does not have to be the entity that is carrying or will carry out the current or approved activities under the McGovern-Dole Program.

4. Please note that the focus of this pilot is on developing and field testing new products and not on providing school meals on a large scale.

II. Award Information

A. *Award Size:* FAS has approximately $9 million available for the development, improvement, and field testing of micronutrient-fortified food products. The limited funds will generally preclude FAS from approving a project costing more than $3 million, although there is no minimum or maximum amount set for each MFFAPP-funded project.

B. *Type of Award:* All awards will be made in the form of competitive grants.

III. Eligibility Information

For eligibility requirements, see the McGovern-Dole Program regulations (7 CFR 1599.3).

IV. Application and Submission Information

A. *Application content:* An applicant for funding under the MFFAPP shall submit an application that contains the information specified in 7 CFR 1599.4, which includes a completed form SF–424, an Introductory Statement, and a Plan of Operation. Guidance on preparing the Introductory Statement and Plan of Operation can be found at the following address: *http://www.fas.usda.gov/excredits/FoodAid/FFE/FFE.asp*. In addition, the application shall include the following:

1. Information on the micronutrient-fortified food aid products to be introduced, including:

a. A description of the new micronutrient-fortified food aid product to be developed and delivered, and an explanation of how the newly developed food aid product will be field tested and evaluated; or a description of the already existing, but improved, micronutrient-fortified food aid product to be delivered, and an explanation of how the food aid product will be field tested and evaluated;

b. An explanation of the need for the micronutrient-fortified food aid product in the targeted country and information regarding the country's current direct distribution operations, if they already exist, including a description of any micronutrient-fortified foods distributed and current funding resources;

c. Reasons for selecting the type of micronutrient-fortified food aid product;

d. The intended beneficiaries' health or nutritional deficiencies that could be alleviated by the micronutrient-fortified food product; and

e. The impact on the targeted beneficiaries, including an explanation of how the identified health or nutritional deficiencies will be addressed by introducing new or improved micronutrient-fortified food aid.

2. Information about the applicant's past activities in fortifying food products and food aid distribution projects, if any.

3. Information about the costs and logistics that would be involved in carrying out the applicant's proposal, including:

a. A complete description of the costs to develop, or contract to develop, and transport the new or improved food aid product to be introduced, and a budget proposal for funding these items; and

b. A description of the distribution process, storage, and handling, including shelf life, of the new or improved product.

4. If the proposal is to develop and field test a food aid product in conjunction with current or approved activities under the McGovern-Dole Program, a written statement from the entity that is carrying or will carry out such activities that it has agreed to work with the applicant as outlined in its proposal.

5. Information about the level of government and community support for maternal, child, and student health, and nutrition in the targeted country.

6. A detailed description of the methodology, rationale, and proposed timeline to be used to field test and evaluate the impact of the new or improved micronutrient-fortified food aid product on the intended beneficiaries as compared to traditional food assistance commodities.

7. A detailed description of how the project will be evaluated and a completed report submitted to FAS.

B. *Method of Submission:* The entire application package must be submitted electronically either to FAS's online proposal entry system located at *http://www.fas.usda.gov/excredits/FoodAid/FFE/ApplyForProgram.asp,* which is the preferred method, or by e-mail at *ppded@fas.usda.gov.*

C. *Deadline for Submission:* All applications must be received by 5 p.m. Eastern Standard Time, June 10, 2011. Applications received after this date will not be considered.

V. Proposal Review Criteria

A. *Review Process:* FAS will review all responsive proposals that are submitted by the deadline. FAS will invite comments from other U.S. governmental agencies on its award recommendations, but FAS will make the final determination about which proposals to fund. After the initial evaluations, FAS will undertake an additional review to ensure that activities funded under this pilot will be conducted in multiple geographic regions.

B. *Criteria:* After prioritizing the proposals using the McGovern-Dole Program and country criteria outlined in Section I.C., FAS will review and evaluate each proposal using the following criteria:

1. Need for the micronutrient-fortified food aid product (20 percent).

a. Is the need clearly established with statistics on food deficiencies, malnutrition, micronutrient deficiencies, and the effects of these conditions on the intended beneficiaries?

b. Does the targeted country clearly demonstrate commitment to reducing the prevalence of malnutrition and under-nutrition in the country with education and other support?

2. Focus on the product to be developed or improved (30 percent).

a. To what extent would the fortified food aid product provide a benefit by ameliorating or preventing a nutritional deficiency disease?

b. Are the costs to produce or improve the product reasonable?

c. How easy would it be to transport and use the product, and would the shelf life be long enough?

d. Are there adequate measures in place to distribute, store, and handle the product within the targeted country?

e. Is the product appropriate to address the nutritional needs of the

beneficiaries in the context of the targeted country?

3. Organizational experience and capability (20 percent).

a. Does the proposal clearly demonstrate the organization's capability and effectiveness in implementing previous food aid programs, particularly ones targeting school-aged children, children under age 5, or maternal and infant health?

b. Does the proposal provide evidence that the organization has the knowledge, expertise, ability, and resources to successfully implement the project, including evidence of its timeliness and quality of reporting on past food aid activities?

c. Does the proposal demonstrate that the organization has an experienced management team that can properly implement, monitor, and evaluate the project?

4. Monitoring and evaluation (30 percent).

a. Are the baselines and target goals well developed, recent, and clear?

b. Is the monitoring and evaluation criteria and process clearly described and sufficient to provide FAS with an evaluation report that would clearly indicate the benefit and drawbacks of the new product to the population?

c. What are the qualifications of the evaluation team?

d. Is the organization's plan to develop and submit a final evaluation report to FAS clear and well defined?

e. What is the quality of the project's performance measures, and the degree to which they relate to the objectives, deliverables, and proposed approach and activities?

VI. Award Administration Information

1. *Award Notices:* FAS will notify each applicant in writing of the final disposition of its application. FAS will send a letter to each approved applicant that will specify the amount of funding. Once the approved applicant receives this letter, FAS will begin negotiations with the program participant to develop a grant agreement. The agreement will incorporate the details of the project as approved by FAS and in accordance with the McGovern-Dole Program regulations, 7 CFR part 1599. Approved applicants will not receive funding under the MFFAPP until the agreement negotiation is complete and the agreement has been signed by authorized representatives of the applicant and FAS.

2. *Reporting:* An organization receiving funding under the MFFAPP will be required to provide quarterly financial reports, semi-annual logistics and monitoring reports, and a final evaluation report, as provided in the grant agreement. In its final evaluation report, the organization will be required to use supporting evidence gathered during the pilot to describe the benefits and drawbacks of the new product to the population and to address the benefits or drawbacks of the new or improved product as compared to traditional food assistance commodities. Changes in the original project timelines and adjustments within project budgets must be approved by FAS prior to their implementation.

3. *Monitoring and Evaluation:* A program participant shall submit to FAS, in the manner specified in the agreement, an annual financial audit in accordance with 7 CFR 1599.13(d). If FAS requires an annual financial audit with respect to a particular agreement, and FAS provides funds for this purpose, the participant shall arrange for such audit and submit it to FAS, in the manner specified in the agreement. The participant shall provide to FAS additional information or reports relating to the agreement if requested by FAS.

Signed at Washington, DC on the 24th of January 2011.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2011–5712 Filed 3–11–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Idaho, Golden Hand #3 and #4 Lode Mining Claims, Plan of Operations

AGENCY: Forest Service, USDA.

ACTION: Notice of withdrawal.

SUMMARY: The USDA Forest Service is withdrawing the Environmental Impact Statement (EIS) for The Golden Hand No. 3 and No. 4 Lode Mining Claims Proposed Plan of Operations. The project included mining operations on the lode claims along with associated activities such as road maintenance and construction. The project will not be implemented. Any further action on claims No. 3 and No. 4 would be conducted under a new plan of operation and subsequent environmental documentation.

DATES: The Notice of Intent originally appeared on April 19, 2002 in the **Federal Register** page no 19389. The Notice of Availability of the Final EIS appeared on May 9, 2003 in the **Federal Register** page no 25023. This withdrawal of the Notice of Intent is effective on the date of this publication in the **Federal Register**.

ADDRESSES: Send written comments to Jeff Hunteman, Krassel Ranger District, Payette National Forest, 500 N. Mission, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Jeff Hunteman at the above address, or e-mail: *jhunteman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The mining claims are located in the Frank Church-River of No Return Wilderness, approximately 50 miles northeast of McCall, Idaho in section 26, T22N, R9E, Boise Meridian. The claims encompass approximately 20 acres each adjacent to Coin Creek, a tributary of Beaver Creek, which flows into Big Creek, a tributary of the Salmon River. The Record of Decision will also be withdrawn.

Responsible Official

The responsible official is the Forest Supervisor of the Payette National Forest.

Dated: March 7, 2011.

Suzanne C. Rainville,

Forest Supervisor, Payette National Forest.

[FR Doc. 2011–5760 Filed 3–11–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

White Pine-Nye County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The White Pine-Nye County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on April 15th, 2011 and will begin at 9 a.m.

ADDRESSES: The meeting will be held in Eureka County at the Eureka County Annex, 701 S. Main Street, Eureka, Nevada 89316.

FOR FURTHER INFORMATION CONTACT: Jose Noriega, RAC Coordinator, USDA, Humboldt-Toiyabe National Forest, Ely Ranger District, 825 Avenue E Ely, NV 89301, (775) 289–3031; E-Mail *jnoriega@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items include: (1) Remarks by Forest Supervisor, (2) Review and approve previous meeting's minutes and business expenses, (3) Review and recommend funding allocation for proposed projects; project submittal date deadline is March 31, 2011, (4) Public Comment, (5) Determine timeframes for the next round of project proposals if needed. The meeting is

open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 7, 2011.

Jeanne M. Higgins,

Forest Supervisor.

[FR Doc. 2011–5766 Filed 3–11–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet at the USDA Service Center in Redding, California, on March 30, 2011, from 8:30 a.m. to 12 noon. The purpose of this meeting is to discuss project updates and proposals, information on monitoring efforts, and a timeline for the upcoming year.

DATES: Wednesday, March 30 at 8:30 a.m.

ADDRESSES: The meeting will be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Resource Advisory Committee Designated Federal Official Donna Harmon at (530) 226–2335 or *dharmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

Dated: March 1, 2011.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 2011–5298 Filed 3–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

West Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The West Virginia Resource Advisory Committee will meet in Elkins, West Virginia. 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 for the committee to consider new project proposals.

DATES: The meeting will be held on March 29, 2011, and will begin at 1 p.m.

ADDRESSES: The meeting will be held at the Monongahela National Forest Supervisor's Office, 200 Sycamore Street, Elkins, WV 26241. Written comments should be sent to Kate Goodrich-Arling at the same address. Comments may also be sent via e-mail to *kgoodricharling@fs.fed.us,* or via facsimile to 304–637–0582.

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 Monongahela National Forest, 200 Sycamore Street, Elkins, WV 26241.

FOR FURTHER INFORMATION CONTACT: Kate Goodrich-Arling, RAC coordinator, USDA, Monongahela National Forest, 200 Sycamore Street, Elkins, WV 26241; (304) 636–1800; E-mail *kgoodricharling@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review and approval or amendment of notes from previous meeting (2) Consider new project proposals; and (3) Public Comment. 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: March 7, 2011.

Clyde N. Thompson,

Designated Federal Officer.

[FR Doc. 2011–5768 Filed 3–11–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Dam Owner Survey to Support Management of Gulf of Maine Distinct Population Segment of Atlantic Salmon.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for approval of a new information collection).

Number of Respondents: 109 per year.

Average Hours per Response: 10 minutes for owners of two or fewer dams; 1 hour for those owning three or more dams.

Burden Hours: 23 per year.

Needs and Uses: This is a request for approval of a new information collection.

In 2009, Atlantic salmon populations from the Androscoggin River in South Central Maine to the Dennys River in Eastern Maine were listed as Endangered under the Federal Endangered Species Act (ESA) (74 FR 29344, June 19, 2009). Dams were identified in the listing as a significant threat to the species survival and recovery. In order for recovery to occur, Atlantic salmon must have access to sufficient adult spawning habitat and juvenile rearing habitat to support the continued existence of a recovered salmon population. In furtherance of recovery, the National Marine Fisheries Service (NMFS) proposes to conduct a survey of dam owners.

This survey will identify opportunities for fish passage improvements or dam removal that may fit into existing funding programs directed towards improving fish passage for diadromous fish species. Information from this survey will also be collected to educate NOAA on the current use, anticipated use, and community interest in small dams. This type of information will aid NMFS in developing tools to communicate and work effectively with dam owners within the Gulf of Maine Distinct Population Segment. Information will be collected on current uses of dams, anticipated uses of dams, important issues or concerns to dam owners, and owners' interest in creating fish passage or removing dams. Associations or organizations with an interest in the dams will also be identified.

Affected Public: Business or other for-profit organizations.

Frequency: Annually (one time only, but spread over two years).

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of

Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: March 9, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–5793 Filed 3–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18–2011]

Foreign-Trade Zone 59—Lincoln, NE; Application for Subzone; Cabela's Inc. (Hunting, Fishing, Camping and Related Outdoor Merchandise); Sidney, NE

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lincoln Foreign-Trade Zone, Inc., grantee of FTZ 59, requesting special-purpose subzone status for the warehousing and distribution facilities of Cabela's Inc. (Cabela's), located in Sidney, Nebraska. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 7, 2011.

The Cabela's facilities (210 employees) consist of two sites on 67 acres in Sidney, Nebraska: *Site 1* (55 acres) is located at 3200 Road 101, Sidney; and *Site 2* (12 acres) is located at 3232 Road 101 East, Sidney. The facilities are used for the storage and distribution of outdoor merchandise, clothing and footwear, including optics, electronics, hunting, archery, shooting, fishing, boating, camping, pet and related products (duty rate ranges from duty-free to 48%).

FTZ procedures could exempt Cabela's from customs duty payments on foreign products that will be re-exported (approximately 1% of shipments). On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant and entered for consumption. FTZ designation would further allow Cabela's to realize logistical benefits through the use of weekly customs entry procedures. The request indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 13, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 28, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: March 7, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–5693 Filed 3–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

SUMMARY: As a result of the determinations by the Department of Commerce ("Department") and the International Trade Commission ("ITC") that revocation of the antidumping duty order on porcelain-on-steel cooking ware ("POS cookware") from the People's Republic of China ("PRC") would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Toni Dach, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1655.

SUPPLEMENTARY INFORMATION:

On October 1, 2010, the Department published the notice of initiation of the sunset review of the antidumping duty order on POS cookware from the PRC pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-Year ("Sunset") Review,* 75 FR 60731 (October 1, 2010).

As a result of its review, the Department determined that revocation of the antidumping duty order on POS cookware from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Porcelain-on-Steel Cooking Ware from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 76 FR 7534 (February 10, 2011).

On February 16, 2011, the ITC determined, pursuant to section 751(c)(1) of the Act, that revocation of the antidumping duty order on POS cookware from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable future. *See Porcelain-on-Steel Cooking Ware From China,* 76 FR 12369 (March 7, 2011), and USITC Publication 4216 (February 2011), Porcelain-on-Steel Cooking Ware from China, Investigation No. 731–TA–298 (Third Review).

Scope of the Order

The merchandise covered by this order is porcelain-on-steel cooking ware from the PRC, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 7323.94.00. The HTSUS subheading is provided for convenience and customs purposes. The written description of the scope remains dispositive.

Continuation of the Order

As a result of these determinations by the Department and the ITC that

revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on POS cookware from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: March 7, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–5822 Filed 3–11–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA288

Marine Mammals; File No. 15748

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center (ASLC), Seward, AK, has applied for a permit to conduct research on Weddell seals (*Leptonychotes weddellii*).

DATES: Written, telefaxed, or e-mail comments must be received on or before April 13, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15748 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Joselyd Garcia-Reyes, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The ASLC requests a four-year permit to study thermoregulation in free-living Weddell seals in McMurdo Sound and along the shore of Ross Island, Antarctica. The research would involve capture of up to 30 adult females and 20 pups/juveniles of either sex annually. Adult females determined to not be pregnant and pups/juveniles of either sex would be anesthetized or sedated, have scientific instruments attached externally and inserted internally, be measured and weighed, have blood and blubber samples collected, and receive an ultrasound. Animals would be recaptured, with anesthesia or sedation, to retrieve instruments. An additional 300 seals of any age and either sex may be harassed incidental to the captures. The ASLC requests permission for up to 2 research-related mortalities per year of any animals affected by the research. Samples collected would be exported from Antarctica for analysis in the U.S.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 8, 2011.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–5852 Filed 3–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA292

Marine Mammals; File No. 16087

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS National Marine Mammal Laboratory, Seattle, WA, has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 13, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16087 from the list of available applications.

These documents are also available 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) 13–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above.

Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a five-year permit to take marine mammals in California, Oregon, and Washington to investigate population status, health, demographic parameters, life history and foraging ecology of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustrirostris*). Procedures include: Capture (stalking, round up, hoop net, darting, floating trap); administer drug (IM, subcutaneously); anesthesia (gas, sedatives); euthanasia; attach scientific instruments; mark (clip hair, flipper tag, hot brand, paint, patch); measure; restrain (board, cage, hand, head bag, net, pen); collect tissue sample (blood, blubber, enema, fecal loop, hair, stomach lavage, milk, remote biopsy, skin, swab, urine, vibrissae); ultrasound; and weigh. Up to 509,475 California sea lions may be taken annually, including 3,315 by capture and handle, 100 by harassment and tissue sampling and 506,060 by incidental disturbance. Up to 100 moribund and 40 prematurely born California sea lion pups may be euthanized for health studies over the duration of the permit. Up to 1,185 harbor seals may be taken annually, including 50 by capture and handling, and 1,135 by incidental disturbance. Up to 2,766 northern elephant seals may be taken annually, including 50 by capture and handling, and 2,716 by incidental disturbance. The applicant requests unintentional research-related mortality of up to 49 California sea lions, 4 harbor seals, and 4 northern elephant seals. Up to 4,500 northern fur seals (*Callorhinus ursinus*) may be incidentally disturbed annually at San Miguel Island, CA during research activities.

As established under the Preferred Alternative in the Final Programmatic Environmental Impact Statement (PEIS) for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), NMFS proposes to authorize annual cumulative research-related mortality (under this permit in combination with any others for research on Steller sea lions (*Eumetopias jubatus*) or northern fur seals) of up to 15 percent of the Potential Biological Removal levels for each stock. These annual allowances would include observed and unobserved mortalities, and be calculated based on the nature of the research. The number of research-related mortalities of northern fur seals allowed for this permit may be higher or lower than those requested by the applicant, based on NMFS calculations using the methods outlined in the PEIS.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 9, 2011.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–5838 Filed 3–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA286

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a Western Pacific Stock Assessment Review (WPSAR).

DATES: The meeting of the WPSAR will be held on April 5–7, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Ilima Room, Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI 96814, telephone: (808) 955–4811.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The WPSAR will meet to review new information on the Essential Fish Habitat (EFH) and Habitat of Particular Concern (HAPC) for deep slope bottomfish in the Main Hawaiian Islands. The Magnuson-Stevenson Act mandates regional fisheries management councils and NOAA Fisheries to conduct a review and revision of the EFH components of fisheries management plans every 5 years (600–815, section 10). The second cycle for such reviews since the Act was put into effect was scheduled for 2009. The process has two parts, beginning with NOAA Fisheries identifying any new information relevant to EFH and HAPC definitions that include, but are not limited to, evaluating published scientific literature and unpublished scientific reports; soliciting information from interested parties; and searching for previously unavailable or inaccessible data. Once this first step is completed, NOAA Fisheries is then required to develop written recommendations to assist each Council in the identification of EFH, adverse impacts to EFH, and actions that should be considered to ensure the conservation and enhancement of EFH for each Fishery Management Plan. The Act requires that both steps of the process be conducted in consultation with the Councils, participants in the fishery, interstate commissions, Federal agencies, state agencies, and other interested parties.

The National Marine Fisheries Service has completed this process for deep slope bottomfish in the Main Hawaiian Islands, and the outcomes of the EFH/HAPC review will be subjected to independent peer review and scrutiny under the WPSAR process, which will inform the Western Pacific Regional Fishery Management Council whether the information is sufficient to amend the EFH/HAPC definitions in the Hawaii Archipelago Fisheries Ecosystem Plan.

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 these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and

Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: March 8, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–5697 Filed 3–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA123

Marine Mammals; File No. 15616

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Craig Matkin, North Gulf Oceanic Society, Homer, AK, has been issued a permit to conduct research on marine mammals.

ADDRESSES: The permit 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 Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On January 5, 2011, notice was published in the **Federal Register** (76 FR 542) that a request for a permit to conduct research on marine mammals had been submitted by the above-named applicant. The requested permit has been issued 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 permit allows harassment of marine mammals during conduct of research in Alaskan waters, including southeast Alaska, Prince William Sound, the Kenai Peninsula, the Eastern Aleutian Islands, and the Bering Sea. The purpose of the research is to maintain a long-term killer whale (*Orcinus orca*) monitoring program in Alaskan waters that was initiated over 25 years ago. In addition, the permit holder will examine movements of other non-endangered cetacean species along the North Gulf Coast of Alaska in relation to U.S. Navy testing activities. The research activities include photo-identification, passive acoustic recording, biopsy sampling, tagging with barbed darts and suction cups, and collecting samples of marine mammal carcasses from sites of killer whale predation.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: March 9, 2011.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–5849 Filed 3–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Notice of Availability of Draft Waste Incidental to Reprocessing Evaluation for the Vitrification Melter at the West Valley Demonstration Project for West Valley, New York

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of a draft evaluation which shows that the vitrification melter (used to vitrify waste from reprocessing of spent nuclear fuel and certain treatment material) at the West Valley Demonstration Project (WVDP), located at the Western New York Service Center in West Valley, New York, is waste incidental to reprocessing and thus is not high-level radioactive waste (HLW) and may be managed and disposed of offsite as low-level waste (LLW). DOE prepared the draft evaluation pursuant to DOE Manual 435.1–1, *Radioactive Waste Management.* DOE is consulting with the Nuclear Regulatory Commission (NRC) before finalizing this evaluation. Although it is not required by DOE Manual 435.1–1, DOE is making the draft evaluation available for public and state review and comment during the NRC consultative review period. DOE will make its final evaluation and determination as to whether the vitrification melter is HLW, or is waste incidental to reprocessing which can be managed and disposed of as LLW, after consideration of any public, state, and NRC comments on this draft evaluation.

DATES: The comment period will end April 28, 2011. Comments received after that time will be considered to the extent practicable.

ADDRESSES: The draft waste evaluation is available on the Internet at *http://apps.em.doe.gov/wvdp/,* and is publicly available for review at the following locations: U.S. Department of Energy, Public Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, *phone:* (202) 586–5955, or *fax:* (202) 586–0575; and U.S. DOE, West Valley Demonstration Project Public Reading Room located at the Town of Concord Hulbert Library, 18 Chapel St., Springville, New York 14141, *phone:* (716) 592–7742. Written comments should be submitted to: Mr. Daniel Sullivan, U.S. Department of Energy, West Valley Demonstration Project, 10282 Rock Springs Road, West Valley, New York 14171–9799. Alternatively, comments may also be filed electronically by e-mail to *melter@wv.doe.gov* or by fax at (716) 942–4703.

FOR FURTHER INFORMATION CONTACT: For further information about this draft waste evaluation, please contact Mr. Daniel Sullivan at the mailing address or Web site listed above.

SUPPLEMENTARY INFORMATION: The vitrification melter is a box structure, approximately 10 feet on each side, with a stainless steel outer structure and an interior lined with refractory materials. It was used to solidify high-level waste which had been generated by commercial reprocessing of spent nuclear fuel at the Western New York Nuclear Service Center in West Valley, New York by Nuclear Fuel Services, Inc. from 1966 through 1972. DOE undertook the solidification activities pursuant to DOE's responsibilities under the West Valley Demonstration Project Act. To solidify the waste, DOE vitrified the waste (combined it at a high temperature with borosilicate glass) and transferred the molten glass-waste mixture into specially developed

stainless steel canisters where the mixture hardened into a solid glass waste form. DOE used the vitrification melter as part of this process, specifically to melt glass frit (material used in making glass) together with reprocessing waste sludge and treatment material (spent ion removal resin).

DOE operated the vitrification melter between 1996 and 2002. In 2002, prior to shut down, the vitrification melter was flushed three times with decontamination solutions and emptied using an evacuated canister process so as to remove key radionuclides to the maximum extent technically and economically practical. After completing this decontamination, a small amount of hardened residual radioactive glass material that could not be removed remained inside the vitrification melter. The vitrification melter with the remaining residual waste was characterized for radioactivity and determined to have radionuclide concentrations that do not exceed concentration limits for Class C low-level waste. It was removed from the vitrification cell in 2004 and is presently safely stored at the West Valley Demonstration Project in a Department of Transportation-certified Industrial Package-2 steel transportation container. DOE plans to further stabilize the vitrification melter waste package by filling the melter and the waste package with cement grout before shipment offsite. It will be disposed of at a suitable off-site low-level waste disposal facility, either the Area 5 Radioactive Waste Management Site at DOE's Nevada National Security Site (NNSS) in Nevada or the Waste Control Specialists Federal Facility Waste Disposal Facility near Andrews, Texas. DOE intends to dispose of the vitrification melter waste package in accordance with applicable waste acceptance criteria using specific waste profile documentation.

DOE Manual 435.1–1, which implements DOE Order 435.1, *Radioactive Waste Management,* contains a rigorous evaluation process which DOE uses to determine whether or not certain waste from the reprocessing of spent nuclear fuel is incidental to reprocessing and therefore is not high-level waste and can be managed as low-level waste. This process, in relevant part, requires demonstrating that:

(1) Key radionuclides have been removed to the maximum extent that is technically and economically practical;

(2) The waste will be managed to meet safety requirements comparable to the performance objectives set out in 10 Code of Federal Regulations (CFR) Part 61, Subpart C, *Performance Objectives;* and

(3) The waste will be managed, pursuant to DOE's authority under the *Atomic Energy Act of 1954,* as amended, and in accordance with the provisions of Chapter IV of DOE Manual 435.1–1, provided the waste will be incorporated in a solid physical form at a concentration that does not exceed the applicable concentration limits for Class C low-level waste as set out in 10 CFR 61.55, *Waste Classification.*

The draft waste-incidental-to-reprocessing evaluation summarizes DOE's analysis and shows that the vitrification melter:

(1) Has had key radionuclides removed to the maximum extent technically and economically practical;

(2) Will be managed to meet safety requirements comparable to the NRC performance objectives at 10 CFR part 61, subpart C; and

(3) Will be in a solid physical form that does not exceed concentration limits for Class C low-level waste and will be managed and disposed of pursuant to DOE's authority under the Atomic Energy Act of 1954, as amended, and in accordance with applicable provisions of Chapter IV of DOE Manual 435.1–1.

Accordingly, the draft evaluation demonstrates using the waste-incidental-to-reprocessing evaluation process that the West Valley vitrification melter waste package may be managed and disposed of as low-level waste. The vitrification melter waste package will meet the applicable waste acceptance criteria for the selected offsite low-level waste disposal facility, either the NNSS Area 5 Radioactive Waste Management Site or the Waste Control Specialists Federal Facility Waste Disposal Facility in Texas. The vitrification melter waste package has been approved for disposal by the NNSS in case a final decision is made to send the waste package to that site for disposal.

DOE is consulting with the NRC before finalizing this evaluation. Although not required by DOE Manual 435.1–1, DOE is making the draft evaluation available for public and state review and comment during the NRC consultative review period. DOE plans to issue a final determination as to whether the vitrification melter is high-level waste or can be managed and disposed of as low-level waste following review and consultation with the NRC and consideration of public and state comments.

DOE's decision on the disposal site to be used is not within the scope of this draft evaluation. Any DOE decision on the facility to which the Vitrification Melter waste package would be sent would be made after the final DOE evaluation and determination, following consideration of NRC and public comments on this draft evaluation, and after DOE confers with appropriate State officials in the state where the waste package may be disposed.

Issued in Washington, DC, on March 8, 2011.

Frank Marcinowski,

Deputy Assistant Secretary for Technical and Regulatory Support, Office of Environmental Management.

[FR Doc. 2011–5789 Filed 3–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Ultra-Deepwater Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 6, 2011, 8 a.m.–5 p.m. (CDT). Thursday, April 7, 2011, 8 a.m.–4 p.m. (CDT).

ADDRESSES: Crowne Plaza Hotel, Houston North—Greenspoint, 425 North Sam Houston Parkway East, Houston, Texas 77060.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: (202) 586–5600.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on the development and implementation of programs related to ultra-deepwater architecture and technology to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, Section 999D.

Tentative Agenda

April 6

7:30 a.m. Registration.

8 a.m.–4:45 p.m. Welcome & Introductions, Opening Remarks, and Discussion of Subcommittee Reports, and Findings regarding the *Draft 2011 Annual Plan.*

4:45 p.m. Public Comments, if any.

5 p.m. Adjourn.

April 7

7:30 a.m. Registration.
8 a.m.–4 p.m. Discussion of Recommendations regarding the *Draft 2011 Annual Plan.*
4 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least two business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the three-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days by contact Ms. Melchert at the address above or at the Committee's Web site: *http://www.fossil.energy.gov/programs/oilgas/advisorycommittees/UltraDeepwater.html.*

Issued at Washington, DC, on March 8, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–5806 Filed 3–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Availability of Department of Energy-Quadrennial Technology Review Framing Document and Request for Public Comment

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability and request for public comment.

SUMMARY: DOE has initiated a Quadrennial Technology Review (DOE–QTR) of its energy technology policies and programs. The DOE–QTR Framing Document (framing document) has been developed as a principal means of facilitating stakeholder engagement in that review process. The framing document describes the Nation's energy landscape and challenges, important research, development, and demonstration (RD&D) policy choices to be made, and summarizes the current status of energy technologies and DOE technology program goals. It is intended to serve as the common framework for stakeholder engagement through advisory committees, workshops, and expert discussion groups.

DATES: Submit written comments on or before April 15, 2011.

ADDRESSES: Electronic mail comments may be submitted to: *DOE–QTRmailbox@hq.doe.gov.* Please include "DOE–QTR RFI" in the subject line. Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message.

Comments may also be submitted by surface mail to: Department of Energy, Office of the Under Secretary for Science (S4), 1000 Independence Ave., SW., Washington, DC 20585.

Respondents are encouraged to submit comments electronically to ensure timely receipt. The DOE–QTR framing document can be accessed at *http://energy.gov/QTR.*

FOR FURTHER INFORMATION CONTACT: Asa Hopkins, Office of the Under Secretary for Science at (202) 586–0505, or e-mail *asa.hopkins@science.doe.gov.*

SUPPLEMENTARY INFORMATION: The energy technology development and deployment programs of the Department of Energy include the Advanced Research Projects Agency–Energy (ARPA–E) and the Offices of Electricity Delivery & Energy Reliability, Energy Efficiency & Renewable Energy, Fossil Energy, and Nuclear Energy—a set of programs with an annual collected budget of about $4.3 billion. Additionally, the Department administers loan guarantees to eligible clean energy projects and provides direct loans to eligible manufacturers of advanced technology vehicles and components.

DOE is undertaking development of a DOE–Quadrennial Technology Review (QTR), a component of a government-wide Quadrennial Energy Review as recommended by the President's Council of Advisors on Science & Technology. This Administration's national energy goals are to:

- Reduce energy-related greenhouse gas emissions by 17% by 2020 and 83% by 2050, from a 2005 baseline;
- Supply 80% of America's electricity from clean energy sources by 2035; and
- Support deployment of 1 million electric vehicles (EVs) on the road by 2015.

This notice requests public comment on the following questions related to the DOE–QTR and the framing document.

A. DOE Energy Technology Mission. Is the mission statement, "[t]o facilitate the invention, refinement, and early deployment of meaningful technologies that enable options for scaling by the private sector toward national energy goals," appropriate for energy technology development and deployment programs of the Department? By facilitate, we mean that we convene and fund various entities–the national laboratories, academia, the private sector—as well as perform the basic research that underpins invention and refinement. By invention and refinement, we mean that we work on both revolutionary and evolutionary technologies. By early deployment, we mean that we support some activities beyond first commercial demonstration. By meaningful technologies, we mean that we pursue technologies that could have a material impact when deployed. Accordingly, scale, economics, and timeliness are important criteria. By enable options, we mean that we do not pick winners and losers; the markets make those choices. By scaling by the private sector, we mean that we support commercialization as an essential part of what we do. With reference to national energy goals, we mean that we would not pursue all technologies; only those that enhance energy and national security, reduce environmental impacts, and increase U.S. competitiveness.

B. U.S. Energy Framework. DOE has identified six strategies to address our National energy goals. These strategies divide into two trios: One for transport, and one for stationary energy (heat and power). The transport strategies are: [1] Increase vehicle efficiency, [2] promote progressive electrification of the vehicle fleet, and [3] develop alternative fuels. The stationary strategies are: [4] Increase building and industrial efficiency, [5] modernize the grid, and [6] drive adoption and deployment of a clean electricity supply. Have we correctly identified and structured these six strategies?

C. Clean Energy Leadership. How can DOE activities best support leadership in clean energy innovation? In clean energy manufacturing? In clean energy deployment? How do we balance international competitiveness against international cooperation?

D. Program Definition and Management. What principles should the Department follow for allocating resources among technologies of disparate maturity and potential time to impact? How many technology options should the Department provide for the private sector, and how should the value of that diversity be weighed against timeliness, scale, and cost-

effectiveness? What should the threshold be for entry of a technology into the DOE portfolio? Does every technology deserve a program? Conversely, when should we declare "mission accomplished" for a government RD&D effort, or cease efforts on a program whose costs may outweigh its benefits? How can DOE be more effective at each stage of the innovation chain? Are technology targets (e.g., cost or deployment targets) useful markers to orient and structure DOE activities?

E. Private Sector Partnership. What are the optimal roles for the private sector, government laboratories, and academia in accelerating technology innovation? How can DOE best coordinate activities between and among these types of organizations (including the wide variety of institutions within each class)? How should we gauge the effectiveness of this coordination? How can the basic-applied coupling be optimized? Are there examples in other sectors or other countries that can serve as models? Are "technology user facilities" analogous to the Department's scientific user facilities possible, or even desirable? If so, what would be the most effective model for their operation? How can the Department best gather technology market information? How can information on private sector innovation be captured without compromising competitive advantage?

F. Technology Demonstration. What are best practices in performing large-scale demonstration projects? How close to commercial viability does a demonstration have to be? What are the optimal cost sharing arrangements? How might demonstrations be coordinated with DOE financing activities? How can demonstration projects better benefit all stakeholders beyond the immediate participants? How are lessons-learned best captured and promoted, and how is intellectual property best handled? How should DOE determine the number of demonstrations needed to address technical and operation risks? How do we think about failure in the demonstration phase?

G. Non-Technical Barriers. A number of non-technical barriers—including Federal, state, and local regulations, market failures, and non-technical risks—impact the rate of deployment of energy technologies. What, if any, role should the Department have in addressing these barriers?

H. Technologies and Resources. The framing document published in association with this announcement describes each of the six strategies just mentioned in greater detail, and highlights several technologies that could contribute to success in each strategy. For each technology or set of technologies, the framing document provides a non-exclusive list of resources that we intend to draw upon as we develop the DOE–QTR. Among these resources are: The America's Energy Future reports from the National Academies of Science (*http://sites.nationalacademies.org/Energy/index.htm*); historical data from the Energy Information Administration (*http://www.eia.gov*); the European Commission on Energy's *Investing in the Development of Low Carbon Technologies: Strategic Energy Technology Plan* (*http://ec.europa.eu/energy/technology/set_plan/set_plan_en.htm*); technology-specific DOE and interagency studies and reports listed in the relevant technology sections of the framing document; and the International Institute for Applied Systems Analysis's *Global Energy Assessment* (*http://www.iiasa.ac.at/Research/ENE/GEA/index_gea.html*), when it becomes available. Other resources are listed in the framing document, associated with each technology. We welcome comment on the selection of these technologies and sources, as well as suggestions on alternate sources. We also welcome updated technology, cost, and forecast data, particularly in rapidly-developing fields.

The Department also welcomes comment on the format and tone of the framing document as well as identification of any factual errors or omissions of relevant facts and data.

Public Participation Policy

It is the policy of the Department to ensure that public participation is an integral and effective part of DOE activities, and that decisions are made with the benefit of significant public input and perspectives.

The Department recognizes the many benefits to be derived from public participation for both stakeholders and DOE. Public participation provides a means for DOE to gather a diverse collection of opinions, perspectives, and values from the broadest spectrum of the public, enabling the Department to make more informed decisions. Public participation benefits stakeholders by creating an opportunity to provide input on decisions that affect their communities and our nation. In keeping with the President's commitment to transparency in government, DOE will post online at *http://energy.gov/QTR* all submissions received from external parties in response to this request for comment. In addition, DOE will discuss this framing document and the submissions received from external parties with advisory committees, workshops, and expert discussion groups.

Issued in Washington, DC, on March 9, 2011.

Steven E. Koonin,

Under Secretary for Science, Department of Energy.

[FR Doc. 2011–5794 Filed 3–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–46–000.

Applicants: Milford Wind Corridor Phase II, LLC, Milford II Holdings, LLC.

Description: Application of Milford Wind Corridor Phase II, LLC, *et al.* for Authorization of Disposition of Jurisdictional Facilities.

Filed Date: 03/04/2011.

Accession Number: 20110304–5156.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: EC11–47–000.

Applicants: Liberty Energy Utilities (New Hampshire), Granite State Electric Company.

Description: Joint Application for Authorization for Disposition of Jurisdictional Assets Under Section 203 of the Federal Power Act of Granite State Electric Company and Liberty Energy Utilities (New Hampshire) Corp.

Filed Date: 03/04/2011.

Accession Number: 20110304–5211.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4143–024; ER11–46–001; ER10–2975–001; ER98–542–026; ER10–727–002.

Applicants: American Electric Power Service Corporation.

Description: Revised Appendix B per FERC Staff request of American Electric Power Service Corporation.

Filed Date: 03/07/2011.

Accession Number: 20110307–5012.

Comment Date: 5 p.m. Eastern Time on Monday, March 28, 2011.

Docket Numbers: ER05–644–012.

Applicants: PSEG Energy Resources & Trade LLC, PSEG Fossil LLC.

Description: PSEG Companies submits their Compliance Filing Pursuant to the

Commission's order issued on February 2, 2011.

Filed Date: 03/04/2011.

Accession Number: 20110304–5210.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER10–1828–001; ER10–1829–001; ER10–1830–001; ER10–1831–001; ER10–1869–001; ER10–1832–001; ER10–1833–001; ER10–1834–001; ER10–1835–001; ER10–1702–001; ER10–1727–001; ER10–1713–001; ER10–2144–001; ER10–1726–001; ER10–1671–001; ER10–3143–001.

Applicants: Sabine Cogen, LP, GenOn Bowline, LLC, GenOn Canal, LLC, GenOn Delta, LLC, GenOn Kendall, LLC, GenOn Potrero, LLC, GenOn Power Midwest, LP, GenOn REMA, LLC, GenOn Energy Management, LLC, GenOn Chalk Point, LLC, GenOn Mid-Atlantic, LLC, GenOn Potomac River, LLC, GenOn Florida, LP, GenOn West, LP, GenOn Wholesale Generation, LP, RRI Energy Services, LLC.

Description: Supplement to Notification of Change in Status and Triennial Updated Market Power Analysis for the Northeast Region.

Filed Date: 03/04/2011.

Accession Number: 20110304–5213.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER10–2670–001; ER10–2669–001; ER10–2671–001; ER10–2673–001; ER10–2253–001; ER10–3319–002; ER10–2674–001; ER10–1543–001; ER10–1544–001; ER10–2627–001; ER10–2629–001; ER10–1546–002; ER11–1933–001; ER10–1547–001; ER10–1549–001; ER10–2675–001; ER10–2676–001; ER10–2636–001; ER10–1975–001; ER10–1974–001; ER10–1550–002; ER11–2424–002; ER10–2677–001; ER10–1551–001; ER10–2678–001; ER10–2638–001.

Applicants: ANP Blackstone Energy Company, LLC, ANP Bellingham Energy Company, LLC, ANP Fund I, LLC, Armstrong Energy Limited Partnership, L.L.L.P., Astoria Energy, LLC, Astoria Energy II, LLC, Calumet Energy Team, LLC, Choctaw Gas Generation, LLC, Choctaw Generation Limited Partnership, FirstLight Hydro Generating Corporation, FirstLight Power Resources Management, LLC, GDF SUEZ Energy Marketing NA, Inc., Green Mountain Power Corporation, Hopewell Cogeneration Limited Partnership, Hot Spring Power Company, LLC, IPA Trading, Inc., Milford Power Limited Partnership, Mt. Tom Generating Company, LLC, North Jersey Energy Associates, A Limited Partnership, Northeast Energy Associates, L.P., Northeastern Power Company, Pinetree Power—Tamworth, Inc., Pleasants Energy, LLC, Syracuse Energy Corporation, Troy Energy, LLC, Waterbury Generation LLC.

Description: Notice of Change in Status of the GDF SUEZ Companies with Respect to the Market-Based Rate Authority of Each.

Filed Date: 03/04/2011.

Accession Number: 20110304–5236.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–2378–002.

Applicants: Consolidated Edison Energy, Inc.

Description: Consolidated Edison Energy, Inc. submits tariff filing per 35: Supplemental Information Filing #2 Order 697 Compliance Filing to be effective 1/1/2011.

Filed Date: 03/04/2011.

Accession Number: 20110304–5123.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–2520–001.

Applicants: Pacific Northwest Generating Cooperative, Inc.

Description: Pacific Northwest Generating Cooperative, Inc. submits tariff filing per 35: Triennial Market Power Update to be effective 12/21/2010.

Filed Date: 03/04/2011.

Accession Number: 20110304–5140.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 3, 2011.

Docket Numbers: ER11–2700–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): 03–04–11 CMMPA amendment to be effective 7/28/2010.

Filed Date: 03/04/2011.

Accession Number: 20110304–5209.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–3019–000.

Applicants: Greenbelt Energy.

Description: Greenbelt Energy submits tariff filing per 35.1: Greenbelt Energy Baseline Tariff to be effective 3/4/2011.

Filed Date: 03/04/2011.

Accession Number: 20110304–5133.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–3020–000.

Applicants: Front Range Power Company, LLC.

Description: Front Range Power Company, LLC submits tariff filing per 35.15: Cancellation of MBR Tariff to be effective 3/4/2011.

Filed Date: 03/04/2011.

Accession Number: 20110304–5161.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–3021–000.

Applicants: Massachusetts Electric Company.

Description: Massachusetts Electric Company submits tariff filing per 35.1: Borderline Sales Tariff Rate Schedule Update Filing to be effective 3/5/2011.

Filed Date: 03/04/2011.

Accession Number: 20110304–5171.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–3022–000.

Applicants: New England Power Company.

Description: New England Power Company submits tariff filing per 35.1: Amendment to Service Agreement No. 6 with Granite State Electric Co. to be effective 12/31/9998.

Filed Date: 03/04/2011.

Accession Number: 20110304–5188.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Docket Numbers: ER11–3023–000.

Applicants: Milford Wind Corridor Phase I, LLC.

Description: Milford Wind Corridor Phase I, LLC submits tariff filing per 35.12: Tenant in Common Agreements to be effective 3/4/2011.

Filed Date: 03/04/2011.

Accession Number: 20110304–5204.

Comment Date: 5 p.m. Eastern Time on Friday, March 25, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–14–000.

Applicants: Southwest Power Pool, Inc.

Description: Supplement to December 30, 2010 Application of Southwest Power Pool, Inc.

Filed Date: 03/04/2011.

Accession Number: 20110304–5212.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need

not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5752 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR10–14–002; PR11–92–000]

Enterprise Texas Pipeline LLC; Notice of Compliance Filing

Take notice that on March 1, 2011, Enterprise Texas Pipeline LLC (Enterprise Texas) filed a revised Statement of Rates to its Statement of Operating Conditions implementing the settled rates and a Refund Report pursuant to its September 23, 2010, Settlement Agreement approved by a December 16, 2010, Letter Order.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 7 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 Tuesday, March 15, 2011.

Dated: March 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5782 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG11–33–000 et al.]

Notice of Effectiveness of Exempt Wholesale Generator Status

Windstar Energy, LLC	Docket No. EG11–33–000.
Hatchet Ridge Wind 2010–B	Docket No. EG11–34–000.
Hatchet Ridge Wind 2010–B, Hatchet Ridge Wind 2010–A	Docket No. EG11–35–000.
Alta Wind II Owner Lessor C	Docket No. EG11–36–000.
Vermont Wind, LLC	Docket No. EG11–37–000.
Alta Wind II Owner Lessor E	Docket No. EG11–38–000.
Alta Wind II Owner Lessor D	Docket No. EG11–39–000.
Alta Wind II Owner Lessor B	Docket No. EG11–40–000.
Alta Wind II Owner Lessor A	Docket No. EG11–41–000.
Iberdrola Renewables, Inc	Docket No. EG11–42–000.

Take notice that during the month of January 2011, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations 18 CFR 366.7(a).

Dated: March 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5709 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR11–90–000; PR11–93–000]

Enogex LLC; Notice of Filing

Take notice that on February 28, 2011, and March 2, 2011, Enogex LLC (Enogex) filed pursuant to Exhibit A to its Operating Conditions Applicable to Transportation Services (SOC) and section 284.123(e) of the Commission's regulations, to revise its annual fuel percentages and to permanently change the annual filing date as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 7 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 Tuesday, March 15, 2011.

Dated: March 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5783 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–91–000]

Bay Gas Storage, LLC; Notice of Filing

Take notice that on February 28, 2011, Bay Gas Storage, LLC (Bay Gas) filed pursuant to Section 12.2.4 of its Statement of Operating Conditions to revise its Company Use Percentage as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 7 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 Tuesday, March 15, 2011.

Dated: March 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5780 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3013–000]

Coolidge Power LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Coolidge Power LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 28, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC.

There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5751 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR11–4–000]

Tesoro Refining and Marketing Company and Tesoro Logistics Operations, LLC; Notice of Request for Jurisdictional Determination or Temporary Waiver of Tariff Filing and Reporting Requirements

On February 8, 2011, Tesoro Refining and Marketing Company (TRMC) and Tesoro Logistics Operations, LLC (TLO) (collectively, Tesoro) filed a Request for Jurisdictional Determination, or in the Alternative Temporary Waiver of Tariff Filing and Reporting Requirements. Tesoro requests that the Commission determine that certain pipeline spurs that are part of TRMC's internal refinery operations are not subject to the Commission's jurisdiction under the ICA. In the alternative, Tesoro requests that the Commission grant a temporary waiver of the tariff filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act for these facilities. Tesoro states that these pipeline spurs are presently owned by TRMC, but are intended for transfer to its affiliate, TLO. Tesoro states that the pipeline spurs are involved in an arrangement for the formation of a Master Limited Partnership (MLP) and the transfer of assets to that MLP.

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 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 Tuesday, March 22, 2010.

Dated: March 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5707 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–110–000]

Freebird Gas Storage, LLC; Notice of Request Under Blanket Authorization

Take notice that on March 1, 2011, Freebird Gas Storage, LLC (Freebird) filed a Prior Notice Request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, and Freebird's blanket certificate for authorization to increase the storage capacity and deliverability at its East Detroit Storage Facility in Lamar County, Alabama. Specifically, Freebird proposes to (1) Increase the maximum total capacity of the facility from 11.4 billion cubic feet (Bcf) to 13.5 Bcf; (2) increase the maximum working gas capacity from 9.14 Bcf to 11.2 Bcf; (3) increase the maximum daily withdrawal rate to 305 MMcf (million cubic feet) per day and the maximum daily injection rate to 350 MMcf per day; and (4) increase the maximum stabilized bottomhole reservoir pressure from 680 pounds per square inch gauge (psig) to 810 psig. Freebird states that it does not have to construct any additional facilities to make this additional capacity available, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Prior Notice should be directed to Daryl W. Gee, Director, Enstor Operating Company, LLC, 20329 Hwy. 249, Suite 400, Houston, TX 77070, telephone no. (281) 374–3056, facsimile no. (281) 374–3051 and E-mail: *daryl.gee@enstorinc.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

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 commenter's 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 commenter's will not be required to serve copies of filed documents on all other parties.

However, the non-party commentary, 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 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*) under the "e-Filing" link.

Dated: March 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5784 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the ICT Stakeholders Policy Committee and Entergy Regional State Committee Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the meetings noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Stakeholder Policy Committee Meeting

March 16, 2011 (1 p.m.–5 p.m.)

March 17, 2011 (8 a.m.–12 p.m.)

Entergy Regional State Committee Meeting

March 17, 2011 (1 p.m.–5 p.m.)
March 18, 2011 (8 a.m.–12 p.m.
Astor Crowne Plaza,
739 Canal Street,
New Orleans, LA 70130,
504–962–0500.

The discussions may address matters at issue in the following proceedings:

Docket No.	
OA07–32	Entergy Services, Inc.
EL00–66	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
EL01–88	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
EL07–52	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
EL08–51	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
EL08–60	*Ameren Services Co.* v. *Entergy Services, Inc.*
EL09–43	*Arkansas Public Service Commission* v. *Entergy Services, Inc.*
EL09–50	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
EL09–61	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
EL10–55	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
EL10–65	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
ER05–1065	Entergy Services, Inc.
ER07–682	Entergy Services, Inc.
ER07–956	Entergy Services, Inc.
ER08–1056	Entergy Services, Inc.
ER09–636	Entergy Services, Inc.
ER09–833	Entergy Services, Inc.
ER09–1224	Entergy Services, Inc.
ER10–794	Entergy Services, Inc.
ER10–1350	Entergy Services, Inc.
ER10–1367	Entergy Services, Inc.
ER10–2748	Entergy Services, Inc.
ER11–2131	Entergy Arkansas, Inc.
ER11–2132	Entergy Louisiana, LLC
ER11–2133	Entergy Louisiana, LLC
ER11–2134	Entergy Mississippi, Inc.
ER11–2135	Entergy New Orleans, Inc.
ER11–2136	Entergy Texas, Inc.
ER11–2562	Entergy Louisiana, LLC
ER11–3357	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: March 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5710 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice of Technical Conference

	Docket No.
Priority Rights to New Participant-Funded Transmission	AD11–11–000
Alta Wind I, LLC	EL10–62–000
Alta Wind II, LLC	
Alta Wind III, LLC	
Alta Wind IV, LLC	
Alta Wind V, LLC	
Alta Wind VI, LLC	
Alta Wind VII, LLC	
Alta Wind VIII, LLC	
Alta Windpower Development, LLC	
TGP Development Company, LLC	
Puget Sound Energy, Inc	EL10–72–001
Terra-Gen Dixie Valley, LLC, TGP Dixie Development Company, LLC, and New York Canyon, LLC	EL10–29–002
Green Borders Geothermal, LLC v. *Terra-Gen Dixie Valley, LLC*	EL10–36–002
Terra-Gen Dixie Valley, LLC	ER11–2127–001
Northern Pass Transmission, LLC	ER11–2377–000
Cedar Creek Wind Energy, LLC	RC11–1–000
Milford Wind Corridor Phase I, LLC	RC11–2–000
SunZia Transmission, LLC	EL11–24–000

On February 22, 2011, the Federal Energy Regulatory Commission (Commission) announced that a Technical Conference on Priority Rights to New Participant-Funded Transmission will be held on Tuesday, March 15, 2011, from 9:30 a.m. to 3:15 p.m. (EST). The staff-led conference will be held in the Commission Meeting Room at the Commission's headquarters at 888 First Street, NE., Washington, DC 20426. The conference will be open for

the public to attend and advance registration is not required. Members of the Commission may attend the conference.

Attached to this supplemental notice is an agenda for the conference. If any changes are made, the revised agenda will be posted prior to the event on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov.*

Notice is also hereby given that discussions at the conference may address matters at issue in the above-referenced individual proceedings that are either pending or within their rehearing period.

A free webcast of the technical conference will be available. Anyone with internet access who desires to listen to this event can do so by navigating to the Calendar of Events on the Commission's Web site and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for webcasts and will offer the option of listening to the conference via phone-bridge for a fee. If you have any questions about the webcast, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

This conference will also be transcribed. Transcripts will be available immediately, for a fee, from Ace Reporting Company (202–347–3700 or 800–336–6646).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

For further information please contact Becky Robinson at (202) 502–8868 or *Becky.Robinson@ferc.gov;* or Pierson Stoecklein at (202) 502–6372 or *Pierson.Stoecklein@ferc.gov*.

Dated: March 7, 2011.

Kimberly D. Bose,

Secretary.

Priority Access to New Participant-Funded Transmission

AD11–11–000

March 15, 2011

Agenda

9:30–9:45 a.m. Welcome and Opening Remarks

Introduction

The electric industry has evolved since Order No. 888 was adopted. In addition to the traditional utility structure of vertical integration, new models for developing, owning, and operating electric transmission infrastructure have been the subject of petitions before the Commission. In several of these proceedings, various proposals have been made regarding priority access to the transmission capacity developed. Commission staff would like to explore issues related to priority rights to use transmission infrastructure developed under these new business models in two contexts: independent and/or merchant transmission [1] and generator lead lines.[2]

In both contexts, participants are encouraged to identify and discuss the appropriate balance between the Commission's requirements for open access and the needs of project developers. Participants are encouraged to propose and discuss possible regulatory alternatives that are consistent with the Commission's open access policies and its statutory responsibility to ensure that rates, terms, and conditions of service are just and reasonable and not unduly discriminatory or preferential.

Panel 1

9:45–11:45 a.m. Independent and/or Merchant Transmission Lines

Transmission infrastructure is no longer solely developed, owned, and operated by incumbent utilities serving native load within their traditional footprint, but also by non-incumbent, independent developers on a cost-of-service or negotiated rate basis. The purpose of this panel is to discuss whether to allow these non-traditional entities flexibility in the allocation of priority rights to the use of transmission facilities and, if so, how such flexibility could be implemented consistent with Commission open access policies. Panelists are encouraged to address:

- The effect of the Commission's current affiliate rules and pricing structures (*e.g.,* cost-based or negotiated rates) on the economics of a proposed project, as well as on efforts to right-size/up-size a proposed project;
- The need for and appropriate application of mechanisms to ensure customer interest in and access to new transmission (including, but not necessarily limited to anchor shipper/tenant arrangements and open seasons) and how such mechanisms can be implemented to accommodate developers' project development and customers' needs, while satisfying the Commission's open access policies and responsibility to ensure that rates are just and reasonable and not unduly discriminatory or preferential.

Panelists

- ➢ Stephen Conant, Senior Vice President for Strategic Development, Anbaric Transmission, LLC & NEITC
- ➢ Terry Wolf, Manager, Transmission Services, Missouri River Energy Services
- ➢ Mike Cashell, Chief Transmission Officer, NorthWestern Energy
- ➢ Cynthia Marlette, Special Counsel, Patton Boggs LLP (Western Independent Transmission Group)
- ➢ Michael Skelly, President, Clean Line Energy
- ➢ David Raskin, Partner, Steptoe & Johnson LLP
- ➢ Robert van Beers, Chief Development Officer, Tonbridge Power, Inc.
- ➢ Tyson Utt, Project Manager, Horizon Wind Energy LLC
- ➢ Kenneth Houston, Director, Transmission Services, PacifiCorp

11:45 a.m.–1 p.m. BREAK

Panel 2

1–3 p.m. Generator Lead Lines

Increasingly, generation owners have chosen to build, administer, and operate the transmission facilities that interconnect their generation facilities with the network transmission system, referred to herein as generator lead lines. In that situation, generation owners also have sought to secure priority rights to use the capacity on these lines. The purpose of this panel is to address the application of the Commission's open access policies to generator lead lines in the instance when affiliated or unaffiliated third-party generators also seek to use these facilities. Panelists are encouraged to address:

- The unique attributes of generator lead lines among transmission facilities (including ownership structures, physical or operational characteristics, etc.);
- The implications for generation developers and potential transmission customers of the Commission applying open access polices in the same manner to generator lead lines as it applies those policies to other transmission facilities, and whether the Commission should apply its open access policies to generator lead line facilities in a manner different from the way it applies such policies to other transmission facilities;
- The showing required to justify priority usage allocations (*e.g.,* types of ownership/lease arrangements and expansion/development plans with definite dates and milestones for construction), and the extent to which this showing accommodates developers' project development and customers' needs, while satisfying the Commission's open access policies and responsibility to ensure that rates are just and reasonable and not unduly discriminatory or preferential.

Panelists

- ➢ Brad Oachs, Chief Operating Officer, Minnesota Power
- ➢ Joel Newton, Senior Attorney, NextEra Energy Resources LLC
- ➢ Tom DeBoer, Director, Rates and Regulatory Affairs, Puget Sound Energy, Inc.
- ➢ Richard Lorenzo, Partner, Loeb & Loeb LLP
- ➢ Adam Wenner, Partner, Chadbourne & Parke LLP
- ➢ Kurt Adams, Executive Vice President & Chief Development Officer, First Wind
- ➢ Kris Zadlo, Vice President, Regulatory Affairs and Transmission, Invenergy LLC

3–3:15 p.m. Wrap-Up

[1] *See, e.g., Chinook Power Transmission, LLC,* 126 FERC ¶ 61,134 (2009).

[2] *See, e.g., Milford Wind Corridor, LLC,* 129 FERC ¶ 61,149 (2009).

[FR Doc. 2011–5708 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2059–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Informal Technical Conference

Take notice that an informal technical conference will be convened in this proceeding commencing at 10:00 am on April 12, 2011 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Janet K. Jones, *JanetJones@ferc.gov,* (202) 502–8165.

Dated: March 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5781 Filed 3–11–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9279–9]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held March 30 and 31 at the Arlington Court Suites Hotel, 1200 North Courthouse Road, Arlington, VA. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The CHPAC will meet March 30 and 31, 2011.

ADDRESSES: Arlington Court Suites Hotel, 1200 North Courthouse Road, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Martha Berger, Office of Children's Health Protection, USEPA, MC 1107T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2191, *berger.martha@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. Preliminary agenda includes discussion of advice letters on chemical prioritization and on asthma disparities, sustainability and children's health, guidelines to states for school environmental health programs, and the Design for the Environment program.

The final agenda will be posted at *http://www.epa.gov/children.*

Access: For information on access or services for individuals with disabilities, please contact Martha Berger at 202–564–2191 or *berger.martha@epa.gov.*

Dated: March 3, 2011.

Martha Berger,

Designated Federal Official.

[FR Doc. 2011–5803 Filed 3–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9280–1]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Grants Chlorinated Solvents Superfund Site, Grants, Cibola County, New Mexico.

The settlement requires the Holiday Cleaners and Laundry to pay a total of $1000.00 as payment of response costs to the Hazardous Substances Superfund plus interest. The settlement includes a covenant not to sue pursuant to Section 107 of CERCLA, 42, U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before April 13, 2011.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Jamie Bradsher, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–7111. Comments should reference the Grants Chlorinated Solvents Superfund Site, Grants, Cibola County, New Mexico and EPA Docket Number 06–07–10, and should be addressed to Jamie Bradsher at the address listed above.

FOR FURTHER INFORMATION CONTACT: I–Jung Chiang, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–2160.

Dated: March 4, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–5835 Filed 3–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2011–0192, FRL–9280–4]

B&B Manufacturing Site; Mobile, Mobile County, AL; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the B&B Manufacturing Site located in Mobile, Mobile County, Alabama for publication.

DATES: The Agency will consider public comments on the settlement until April 13, 2011. The Agency will consider all comments received and may modify or

withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2011–0192 or Site name B&B Manufacturing Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: February 23, 2011.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2011–5837 Filed 3–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2011–0201, FRL–9280–3]

Picayune Wood Treating Site Picayune, Pearl River County, MS; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Picayune Wood Treating Site located in Picayune, Pearl River County, Mississippi for publication.

DATES: The Agency will consider public comments on the settlement until April 13, 2011. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2011–0201 or Site name Picayune Wood Treating Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: February 24, 2011.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2011–5836 Filed 3–11–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 8, 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 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 May 13, 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 the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0750.

Title: 47 CFR 73.671, Educational and Informational Programming for Children; 47 CFR 73.673, Public Information Initiatives Regarding Educational and Informational Programming for Children.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 2,303 respondents; 4,215 responses.

Estimated Time per Response: 1 to 5 minutes.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 30,865 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

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

Needs and Uses: 47 CFR 73.671(c)(5) states that a core educational television program must be identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I.

47 CFR 73.673 states each commercial television broadcast station licensee must provide information identifying programming specifically designed to educate and inform children to publishers of program guides. Such information must include an indication of the age group for which the program is intended.

These requirements are intended to provide greater clarity about broadcasters' obligations under the Children's Television Act (CTA) of 1990 to air programming "specifically designed" to serve the educational and informational needs of children and to improve public access to information about the availability of these programs.

These requirements provide better information to the public about the shows broadcasters air to satisfy their obligation to provide educational and informational programming under the Children's Television Act.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–5740 Filed 3–11–11; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[2011–OGP–1; Docket 2011–0006; Sequence 3]

Office of Federal High-Performance Green Buildings (OFHPGB); Notice of GSA Bulletin OFHPGB 2011–OGP–1

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: This bulletin informs all agencies incurring expenses for energy efficient building investments made in government-owned buildings of useful information available to them from GSA's Policy on Energy Efficient Commercial Buildings Tax Deduction. GSA Bulletin OFHPGB 2011–OGP–1 may be found at *http://www.gsa.gov/portal/content/221677.*

DATES: Effective March 14, 2011.

FOR FURTHER INFORMATION CONTACT: Internal Revenue Service (IRS) guidance on the allocation of the Energy Efficient Commercial Building Tax Deduction for government-owned buildings is set forth in Notice 2008–40, Internal Revenue Bulletin 2008–14, "Amplification of Notice 2006–52; Deduction for Energy Efficient Commercial Buildings." Notice 2008–40 can be found at *http://www.irs.gov/irb/2008-14_IRB/ar12.html.* For clarification of Bulletin content, contact General Services Administration, Office of Governmentwide Policy, Office of Federal High-Performance Green Buildings at (202) 219–1522. Please cite OFHPGB Bulletin 2011–OGP–1.

SUPPLEMENTARY INFORMATION:

A. Background

The Energy Policy Act of 2005 (Pub. L. 109–58) authorized the Energy-Efficient Commercial Buildings Tax Deduction for expenses incurred for qualified energy efficient building investments made by a building owner. In government-owned buildings, the government may allocate this deduction to the person or persons primarily responsible for designing the qualified improvements and this can provide significant incentive for contractors to meet or exceed energy reduction requirements.

In the event that a contractor requests allocation of the tax deduction from an agency, the agency can use the GSA Policy on Energy Efficient Commercial Buildings Tax Deduction as an information resource for allocating the deduction.

B. Procedures

Bulletins regarding the Office of Federal High-Performance Green Building are located on the Internet at *http://www.gsa.gov/portal/content/105239* as OFHPGB Bulletins.

Dated: January 24, 2011.

Kathleen M. Turco,

Associate Administrator, Office of Governmentwide Policy.

GENERAL SERVICES ADMINISTRATION

Washington, DC 20405

OFFICE OF FEDERAL HIGH-PERFORMANCE GREEN BUILDINGS

GSA Bulletin 2011–OGP–1

TO: Heads of Federal Agencies

SUBJECT: Information on GSA Policy on Energy Efficient Commercial Buildings Tax Deduction

1. *What is the purpose of this bulletin?* This bulletin informs all agencies incurring expenses for energy efficient building investments made in government-owned buildings of useful information available to them from GSA's Policy on Energy Efficient Commercial Buildings Tax Deduction (developed and used by GSA's Public Buildings Service).

2. *What is the background of this bulletin?* The Energy Policy Act of 2005 (Pub. L. 109–58) authorized the Energy-Efficient Commercial Buildings Tax Deduction for expenses incurred for qualified energy efficient building investments made by a building owner. The deduction may be taken in the year the energy-efficient improvements are placed in service. In government-owned buildings, the government may allocate this deduction to the person or persons primarily responsible for designing the qualified improvements. The Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343) extended this deduction through December 31, 2013. The provisions authorizing the deduction are codified in the 26 U.S.C. § 179D.

The Energy-Efficient Commercial Buildings Tax Deduction is a significant financial incentive for contractors to meet or exceed an agency's energy reduction requirements for new and existing buildings. In the event that a contractor requests allocation of the tax deduction from an agency, the agency can use GSA's Policy on Energy Efficient Commercial Buildings Tax Deduction as an information resource for allocating the deduction.

3. *Where can my agency find additional information on the policy?* Additional information about GSA's Policy on Energy Efficient Commercial Buildings Tax Deduction and its implementation can be found at *http://www.gsa.gov/portal/content/221677.*

4. *Whom should I contact for further information?* Internal Revenue Service (IRS) guidance on the allocation of the Energy Efficient Commercial Building Tax Deduction for government-owned buildings is set forth in Notice 2008–40, Internal Revenue Bulletin 2008–14, "Amplification of Notice 2006–52; Deduction for Energy Efficient Commercial Buildings." Notice 2008–40 can be found at *http://www.irs.gov/irb/2008-14_IRB/ar12.html.* For clarification of Bulletin content, contact General Services Administration, Office of Governmentwide Policy, Office of Federal High-Performance Green Buildings at (202) 219–1522. Please cite OFHPGB Bulletin 2011–OPG–1.

Dated: January 24, 2011.

Kathleen M. Turco,

Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 2011–5812 Filed 3–11–11; 8:45 am]

BILLING CODE 6820–TL–P

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Monday, April 4, 2011 through Wednesday, April 6, 2011, in San Antonio, Texas. The sessions will take place from 8 a.m. to 5:30 p.m. on Monday through Tuesday. On Wednesday the session will be 8 a.m. to 12 p.m. The meeting will be held at the Crowne Plaza Riverwalk San Antonio located at 111 East Pecan Street, San Antonio, Texas. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The sleeping rooms available at the Crowne Plaza Riverwalk, San Antonio, Texas will be at the government rate of $106 (plus applicable state and local taxes, currently 16.75%) a night for a single or

double. The Crowne Plaza Riverwalk is in compliance with the requirements of Title III of the Americans with Disabilities Act and meets all Fire Safety Act regulations.

William J. Boarman,

Public Printer of the United States.

[FR Doc. 2011–5832 Filed 3–11–11; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authority; Centers for Medicare & Medicaid Services

Notice is hereby given that I have delegated to the Administrator, Centers for Medicare & Medicaid Services (CMS), or his or her successor, the authorities vested in the Secretary for the following provisions of Part A (42 U.S.C. 1301 *et seq.,* as amended) and Part B (42 U.S.C. 1320c *et seq.,* as amended) of Title XI of the Social Security Act (the Act) (42 U.S.C. 1301 *et seq.,* as amended) insofar as such parts pertain to CMS' mission, as described in Section F.00 of CMS' Statement of Organization, Functions, and Delegations of Authority, last published at 55 FR 9363 (March 13, 1990).

Part A (General Provisions) of Title XI of the Act

- Section 1106—The authority under Section 1106, as amended, pertaining to disclosure of information in possession of CMS.
- Section 1110—The authority under Section 1110, as amended, to make grants to States and public and other organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under the Act and programs related thereto, and to make contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters. Refer to F.50.1.a.
- Section 1112—The authority under Section 1112, as amended, to develop and revise from time to time guides or recommended standards regarding the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving public assistance medical care programs and the State programs of medical assistance.
- Section 1116—The authority under Section 1116, as amended, pertaining to State plans thereto under Title XIX of the Act. Refer to F.50.1.b.
- Section 1121—The authority under Section 1121, as amended, pertaining to uniform reporting systems for health services facilities and organizations.
- Section 1122(d), (e) and (f)—The authority under Section 1122(d) and (e), as amended, to identify and deny unnecessary capital expenditure payment amounts to be excluded from reimbursement to health care facilities under Titles XVIII and XIX of the Act when such exclusions have been found necessary and Section 1122(f), as amended, to reconsider determinations made under Section 1122 of the Act.
- Section 1124—The authority under Section 1124, as amended, pertaining to disclosure of ownership and related information by providers, carriers, intermediaries, and similar organizations.
- Section 1124A—The authority under Section 1124A, as amended, pertaining to disclosure requirements for other providers under Part B of Title XVIII of the Act.
- Section 1126—The authority under Section 1126, as amended, pertaining to disclosure by institutions, organizations, and agencies of owners and certain other individuals who have been convicted of certain offenses.
- Section 1128(c)(3)(B)—The authority under Section 1128(c)(3)(B), as amended, to request a waiver of program exclusion from the Office of Inspector General of the Department of Health and Human Services.
- Section 1132—The authority under Section 1132, as amended, pertaining to claims submitted by States for payment with respect to expenditures that affect only programs for which the Administrator, CMS, has delegated authority, including Titles XIX and XXI of the Act. Refer to F.50.1.e.
- Section 1134—The authority under Section 1134, as amended, pertaining to determinations of whether the reasonable costs of services provided to nonprofit hospitals or critical access hospitals are to be deducted from the operating costs of such hospitals or critical access hospitals.
- Section 1137—The authority under Section 1137, as amended, pertaining to income and eligibility verification system for the Medicaid program under Title XIX of the Act.
- Section 1138—The authority under Section 1138, as amended, pertaining to hospital protocols for organ procurement and standards for organ procurement agencies.
- Section 1139—The authority under Section 1139, as amended, pertaining to improving access to, and delivery of, health care for Indians under Titles XIX and XXI of the Act.
- Section 1139A—The authority under Section 1139A, as amended, pertaining to child health quality measures for children enrolled in Medicaid or the Children's Health Insurance Program.
- Section 1144(c)—The authority under Section 1144(c), as amended, pertaining to assistance with Medicare savings program and low-income subsidy program applications.
- Section 1146—The authority under Section 1146, as amended, pertaining to public disclosure of certain information on hospital financial interest and referral patterns.

Part B (Peer Review of the Utilization and Quality of Health Care Services) of Title XI of the Act

- Section 1152—The authority under Section 1152, as amended, pertaining to utilization and quality control peer review organizations.
- Section 1153—The authority under Section 1153, as amended, to contract with utilization and quality control peer review organizations.
- Section 1154—The authority under Section 1154, as amended, pertaining to the functions of the peer review organizations.
- Section 1155—The authority under Section 1155, as amended, pertaining to the right of a beneficiary, provider, or practitioner to request that a utilization and quality control peer review organization reconsider a determination made by that organization. Refer to F.50.1.f.
- Section 1157—The authority under Section 1157, as amended, pertaining to violations of law, limitations on liability and payment for certain legal expenses.
- Section 1158—The authority under Section 1158, as amended, pertaining to utilization and quality control peer review organizations performing certain functions described in Part B of Title XI of the Act under contracts with State programs receiving Federal financial assistance under Title XIX of the Act.
- Section 1159—The authority under Section 1159, as amended, to authorize use of certain funds to administer the provisions of Part B of Title XI of the Act.
- Section 1160—The authority under Section 1160, as amended, to prohibit

against disclosure of information pursuant to a contract under Part B of Title XI of the Act, except that authorities for controlling fraud and abuse under Section 1160(b) of the Act shall be exercised by the Office of Inspector General.

This delegation of authority supersedes the authorities delegated under Part A (42 U.S.C. 1301 et seq.) of Title XI of the Act and Part B (42 U.S.C. 1320c *et seq.*) of Title XI of the Act that were published in the **Federal Register** notice on September 6, 1984, including the authorities contained in paragraphs C.1.—15., and D. of Section F.30—Delegations of Authority; and includes F.40.—Reservations of Authority, *1.—Under Part B of Title XI of the Social Security Act (42 U.S.C. 1320(c) et. seq.); 3.—General Reservations,* paragraphs a. and b. Section F.50.—Limitations of Authority, *1.—Under Parts A and B of Title XI of the Social Security Act (42 U.S.C. 1320 et. seq),* is deleted in its entirety and replaced with the following:

a. Disputes regarding the determinations listed in 45 CFR Part 16, Appendix A, pertaining to discretionary grants, such as grants for research or demonstration projects under section 1110 (42 U.S.C. 1310) of the Act or for special demonstration projects under Section 1115 (42 U.S.C. 1315) of the Act, are heard by the Chair and Members of the Departmental Appeals Board, Office of the Secretary, who issue the final HHS decision. See 42 CFR 430.3 and 457.206; 46 FR 43816.

b. The authority to hear appeals and issue final HHS decisions under Section 1116(e) (42 U.S.C. 1316(e)) of the Act with respect to disallowances or reconsidered disallowances under Title XIX of the Act shall be exercised only by the Chair and Members of the Departmental Appeals Board, Office of the Secretary, pursuant to Section 1116(e)(2) (42 U.S.C. 1316(e)(2)) of the Act. This includes an appeal of a Title XIX disallowance based on a State's failure to meet the timely claims requirements of Section 1132 (42 U.S.C. 1320b–2) of the Act.

c. The authorities under Sections 1128 (42 U.S.C. 1320a–7), 1128A (42 U.S.C. 1320a–7a), 1128B (42 U.S.C. 1320a–7b), 1128D (42 U.S.C. 1320a–7d), 1128E(b)(6) (42 U.S.C. 1320a–7e(b)(6)), 1140 (42 U.S.C. 1320b–10), 1156(b) (42 U.S.C. 1320c–5(b)), and 1160(b) (42 U.S.C. 1320c–9(b)) of the Act for controlling fraud and abuse in healthcare programs shall be exercised by the Office of Inspector General.

d. The hearings to which the procedures in section 1128A(c) (42 U.S.C. 1320a–7a(c)) of the Act apply, as well as the hearings under any other section of the Act authorizing the Secretary to impose a civil remedy, including a civil money penalty, exclusion, or assessment, for which the Secretary has delegated authority to the Administrator, CMS, or to the Office of Inspector General to impose the remedy, shall be conducted by Administrative Law Judges at the Departmental Appeals Board, Office of the Secretary, who issue initial decisions subject to review and final determinations made by the Chair and Members of the Departmental Appeals Board. See 59 FR 52967; 42 CFR Parts 402 and 1002–1004, incorporating the procedures at 42 CFR Part 1005; 42 CFR Part 422, Subpart T; 42 CFR Part 423, Subpart T; and 45 CFR Part 160.

e. Disallowances under Title XXI of the Act, including disallowances based on State's failure to meet the timely claims requirements of Section 1132 (42 U.S.C. 1320b–2) of the Act, are subject to reconsideration by the Chair and Members of the Departmental Appeals Board, Office of the Secretary, under section 1116(d) (42 U.S.C. 1316(d)) of the Act, made applicable to Title XXI by Section 2107(e) (42 U.S.C. 1397gg(e)) of the Act. *See* 42 CFR 457.206.

f. The hearings under Section 1155 (42 U.S.C. 1320c–4) of the Act, which incorporates by reference Section 205(b) (42 U.S.C. 405(b)) of the Act, shall be conducted by Administrative Law Judges in the Office of Medicare Hearings and Appeals, Office of the Secretary, with review by the Medicare Appeals Council at the Departmental Appeals Board, Office of the Secretary. *See* 42 CFR Part 478, Subpart B and 42 CFR Part 405, Subpart J.

g. The hearings under Section 1156(b)(4) (42 U.S.C. and1320c–5(b)(4)) of the Act, which incorporates section 205(b) (42 U.S.C. 405(b)) of the Act, shall be conducted by the Administrative Law Judges at the Departmental Appeals Board, Office of the Secretary, who issue initial decisions subject to review and final determinations made by the Chair and Members of the Departmental Appeals Board. *See* 42 CFR Part 1004, incorporating the procedures at 42 CFR Part 1005; 59 FR 52967.

This delegation of authority is effective immediately.

These authorities may be re-delegated.

These authorities shall be exercised under the Department's policy on regulations and the existing delegation of authority to approve and issue regulations.

I hereby affirm and ratify any actions taken by the Administrator, CMS, or his or her subordinates, which involved the exercise of the authorities under Part A (42 U.S.C. 1301 *et seq.*) of Title XI of the Act and Part B (42 U.S.C. 1320c *et seq.*) of Title XI of the Act delegated herein prior to the effective date of this delegation of authority.

Authority: 44 U.S.C. 3101

Dated: March 4, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–5779 Filed 3–11–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Funding Opportunity Announcement (FOA), Initial Review

The meeting announced below concerns The Institutional Collaboration between the Institute Pasteur of Madagascar and the Centers for Disease Control and Prevention on Malaria and Vector-Borne Diseases Funding Opportunity Announcement (FOA) GH11–003, and Research Activities in Support of Malaria Prevention and Control in the Republic of Uganda as Part of the President's Malaria Initiative, FOA GH11–004, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12 p.m.–3 p.m., May 19, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Institutional Collaboration between the Institute Pasteur of Madagascar and the Centers for Disease Control and Prevention on Malaria and Vector-Borne Diseases, FOA GH11–003, and Research Activities in Support of Malaria Prevention and Control in the Republic of Uganda as Part of the President's Malaria Initiative, FOA GH11–004, initial review."

Contact Person for More Information: Sheree Marshall-Williams, PhD, Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, Georgia 30333, Telephone: (404) 639–7742.

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: March 4, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–5632 Filed 3–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Opportunity to Partner; Testing of Patient Compartment Seating and Restraints to Proposed Test Standard

Authority: 29 U.S.C. 669.

AGENCY: NIOSH, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of informational meeting and opportunity to partner.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH), CDC, HHS, in collaboration with the National Truck Equipment Association, Ambulance Manufacturers Division (NTEA–AMD) has developed a series of proposed ambulance component test standards. One such standard, AMD STANDARD 026—Seat, Seat Mount and Occupant Restraint Dynamic Test—Proposed (draft), seeks to improve occupant and seat retention during crash conditions. As a part of the standard development process, NIOSH will be conducting a series of tests to evaluate existing, redesigned, and/or new seating to validate the test methods proposed. It is anticipated testing will be conducted in up to three phases over approximately 15 months. NIOSH will contract with an independent test facility and provide funding for all testing, instrumentation, data collection, and data analysis. Prospective industry partners will provide the following test assets: Seating, seat retention devices, and occupant restraints. This project has three key goals: (1) To validate test and data collection methodologies proposed in AMD 026 (draft) to support standard development; (2) to support and facilitate the transition of the industry from the current seating design parameters to those proposed in SAE J2917 Surface Vehicle Recommended Practice, Occupant Restraint and Equipment Mounting Integrity—Frontal Impact System-Level Ambulance Patient Compartment, published May 2010, and SAE J2956 Surface Vehicle Recommended Practice, Occupant Restraint and Equipment Mounting Integrity—Side Impact System-Level Ambulance Patient Compartment (draft); and, (3) to develop the design and production "cost-of-change" to meet the proposed design parameters.

DATES AND TIMES: March 23, 2011, 1 p.m.–5 p.m., Eastern Standard Time (EST) March 24, 2011, 8 a.m.–12 noon, EST, by appointment. NIOSH is available to meet with individual companies for those interested in further discussion. We anticipate offering the prospective partners the opportunity to meet for 30 minutes, to ask specific questions pertinent to their situation.

ADDRESSES: Homewood Suites Indianapolis-Downtown, 211 South Meridian Street, Indianapolis, Indiana 46225, Telephone (317) 636–7992. (Coincident with the 2011 Fire Department Instructors Conference (FDIC).)

Letters of Interest: Interested manufacturers should submit a letter of interest with information about their capabilities and level of proposed participation to Jim Green at *JGreen@cdc.gov.* Letters of interest must be received by April 25, 2011.

SUPPLEMENTARY INFORMATION: NIOSH proposes a series of up to 116 tests to better understand the capabilities and limitations of currently available seating and restraints, investigate redesign or new design options, and validate the proposed test standard. As a byproduct of this effort, it is expected that NIOSH and its partners will be able to demonstrate that seating and restraints provided by partners meet the design parameters specified in AMD 026 (draft) and test requirements outlined in SAE J2917 and SAE 2956 (draft), respectively.

Prospective partners will be existing seating and/or restraint manufacturers nationally or internationally. A prospective partner need not be selling to the United States market at the time of this announcement.

Prospective partners will be required to provide test assets (seating, seat retention devices, and/or occupant restraints) free of charge in exchange for their participation in this collaborative standards development and validation effort. In return, NIOSH will cover all costs associated with testing. This includes the cost of the sled buck design and manufacture, rental of appropriate test manikins, instrumentation related to the litter, manikin, and sled buck, test execution, test data analysis, and cost data analysis.

Given the nature of the proposed change, coupled with the cost for each unit, NIOSH anticipates the need to partner with more than one manufacturer. Therefore no one manufacturer should expect to be asked to contribute all needed test assets.

In phase 1, test assets are expected to come from those in the existing product line per mutual agreement with NIOSH. In phases 2 and 3, test assets are expected to be introduced as either redesigns of existing products or new products entirely based on the results of phase 1 testing. The cost of product redesign and manufacture for phase 2 and 3 testing would be borne by the manufacturer partner(s).

Each partner will be invited to participate at the site of testing (a third party independent test facility) during the testing of its product. However, at no time will representatives from two different manufacturers be present at the same time or on the same date. As a participant, each partner will be provided with a copy of all digital video and instrumented data for use in future product development. NIOSH will retain a copy of all data but will code, to the extent possible, to prevent release of vendor specific product data. Partners will retain ownership of each test asset and will be asked to retrieve test assets once each test has been completed. All shipping and/or disposal costs of test assets to and from the independent test facility will be borne by the manufacturer partner(s).

Recognizing any change in standard or test requirement may have a coincident cost; NIOSH will also be seeking to quantify the cost of change—that is, the cost of redesigning and manufacturing to meet the proposed new test standards. In this instance, NIOSH has a separate effort in place with an independent Certified Public Accountant (CPA). Any participant or partner in this effort would be required to work with the CPA in parallel with the test program outlined above. Specifically, the partner would be required to provide the underlying cost data for each product evaluated in the test program. This would include the costs for a current or comparable pre-test or pre-standard seat, seat retention device, and occupant restraint and its companion post standard or post redesign equivalent. Prospective partners should be aware it may be possible to consider a few products within their existing product line (e.g.; entry level, mid level, and high end products). These costs may include: Per

unit cost of materials, per unit cost of labor, per unit cost of design, test and certification, etc. Data from each manufacturer will be held confidential by the CPA and coded to remove corporate identifiers. The goal is to assess the cost of change to the industry rather than to an individual product within a given manufacturers' broad product line.

Candidate companies will be evaluated based on their capability and willingness to work cooperatively to achieve the stated goals. Candidates selected will be required to enter into a Letter of Agreement spelling out the level of participation expected of each partner and the handling of data generated from the partnership. This announcement does not obligate NIOSH to enter into an agreement with any respondents. NIOSH reserves the right to establish a partnership based on the engineering analysis and capabilities found by way of this announcement or other searches, if determined to be in the best interest of the government.

NIOSH recognizes this opportunity will raise many questions for prospective partners. In order to give all involved the greatest opportunity to understand the process and project expectations, the NTEA–AMD, our collaborative partner and host standards setting body, has agreed to provide a meeting room for us to hold an informational meeting to present a broad overview of the effort and answer any resulting questions.

In order to provide us with the best opportunity to meet the needs of all prospective partners at each of these meetings; we request that all interested parties contact Jim Green, NIOSH Project Officer, by e-mail at *JGreen@cdc.gov;* or telephone (304) 285–5857, by Thursday, March 17, 2011.

CONTACT PERSON FOR MORE INFORMATION: Jim Green, NIOSH Project Officer, e-mail: *JGreen@cdc.gov;* telephone (304) 285–5857.

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: March 7, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–5732 Filed 3–11–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Teleconference

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Pilot for State-specific Cross-Sectional Surveillance of Persons with Rare Disorders and Longitudinal Assessment of Outcomes, Funding Opportunity Announcement (FOA) DD11–004, and Pilot Longitudinal Data Collection to Inform Public Health—Fragile X Syndrome, FOA DD11–007, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., April 21, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Pilot for State-specific Cross-Sectional Surveillance of Persons with Rare Disorders and Longitudinal Assessment of Outcomes, FOA DD11–004, and Pilot Longitudinal Data Collection to Inform Public Health—Fragile X Syndrome, FOA DD11–007."

Contact Person for More Information: Donald Blackman, PhD, Scientific Review Officer, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, Georgia 30341, Telephone: (770) 488–3023, E-mail: *DBY7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 7, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–5755 Filed 3–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Family History and Diamond Blackfan Anemia, DD11–010, Initial Review

Correction: This notice was published in the **Federal Register** on January 21, 2011, Volume 76, Number 14, Page 3909. The date for the aforementioned meeting has been changed to the following:

DATES: April 27, 2011 (Closed).

Contact Person for More Information: Michael Dalmat, Dr.P.H., Scientific Review Officer, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, Georgia 30341, Telephone: (770) 488–6423, E-mail: *MED1@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 7, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–5759 Filed 3–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Opportunity to Partner; Testing of Patient Litters and Patient Restraints to Proposed Test Standard

Authority: 29 U.S.C. 669.

AGENCY: NIOSH, Centers for Disease Control and Prevention (CDC),

Department of Health and Human Services (HHS).

ACTION: Notice of informational meeting and opportunity to partner.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH), CDC, HHS, in collaboration with the National Truck Equipment Association, Ambulance Manufacturers Division (NTEA–AMD) has developed a series of proposed ambulance component test standards. One such standard, AMD STANDARD 004—Method for Conducting Litter and Litter Retention System Dynamic Test—Proposed (draft), seeks to improve patient and litter retention during crash conditions. As a part of the standard development process, NIOSH will be conducting a series of tests to evaluate existing, redesigned, and/or new litters to validate the test methods proposed. It is anticipated testing will be conducted in up to three phases over approximately 15 months. NIOSH will contract with an independent test facility and provide funding for all testing, instrumentation, data collection, and data analysis. Prospective industry partners will provide the test assets: Litters and litter retention devices. This project has three key goals: (1) To validate test and data collection methodologies proposed in AMD 004 (draft) to support standard development; (2) to support and facilitate the transition of the industry from the current litter design parameters to those proposed in SAE J2917 Surface Vehicle Recommended Practice, Occupant Restraint and Equipment Mounting Integrity—Frontal Impact System-Level Ambulance Patient Compartment, published May 2010, and SAE J2956 Surface Vehicle Recommended Practice, Occupant Restraint and Equipment Mounting Integrity—Side Impact System-Level Ambulance Patient Compartment (draft); and, (3) to develop the design and production "cost-of-change" to meet the proposed design parameters.

DATES AND TIMES: March 23, 2011, 1 p.m.–5 p.m., Eastern Standard Time (EST). March 24, 2011, 8 a.m.–12 noon, EST, by appointment. NIOSH is available to meet with individual companies for those interested in further discussion. We anticipate offering the prospective partners the opportunity to meet for 30 minutes, to ask specific questions pertinent to their situation.

ADDRESSES: Homewood Suites Indianapolis-Downtown, 211 South Meridian Street, Indianapolis, Indiana 46225, Telephone (317) 636–7992. (Coincident with the 2011 Fire Department Instructors Conference (FDIC)).

Letters of Interest: Interested manufacturers should submit a letter of interest with information about their capabilities and level of proposed participation to Jim Green at *JGreen@cdc.gov.* Letters of interest must be received by April 25, 2011.

SUPPLEMENTARY INFORMATION: NIOSH proposes a series of up to 48 tests to better understand the capabilities and limitations of currently available litters, investigate redesign or new design options, and validate the proposed test standard. As a byproduct of this effort, it is expected that NIOSH and its partners will be able to demonstrate that litters provided by partners meet the design parameters specified in AMD 004 (draft) and test requirements outlined in SAE J2917 and SAE 2956 (draft), respectively.

Prospective partners will be existing litter manufacturers nationally or internationally. A prospective partner need not be selling to the United States market at the time of this announcement.

Prospective partners will be required to provide test assets (litters and mounting systems) free of charge in exchange for their participation in this collaborative standards development and validation effort. In return, NIOSH will cover all costs associated with testing. This includes the cost of the sled buck design and manufacture, rental of appropriate test manikins, instrumentation related to the litter, manikin, and sled buck, test execution, test data analysis, and cost data analysis.

Given the nature of the proposed change, coupled with the cost for each unit, NIOSH anticipates the need to partner with more than one manufacturer. Therefore no one manufacturer should expect to be asked to contribute all needed test assets.

In phase 1, test assets are expected to come from those in the existing product line per mutual agreement with NIOSH. In phases 2 and 3, test assets are expected to be introduced as either redesigns of existing products or new products entirely based on the results of phase 1 testing. The cost of product redesign and manufacture for phase 2 and 3 testing would be borne by the manufacturer partner(s).

Each partner will be invited to participate at the site of testing (a third party independent test facility) during the testing of its product. However, at no time will representatives from two different manufacturers be present at the same time or on the same date. As a participant, each partner will be provided with a copy of all digital video and instrumented data for use in future product development. NIOSH will retain a copy of all data but will code, to the extent possible, to prevent release of vendor specific product data. Partners will retain ownership of each test asset and will be asked to retrieve test assets once each test has been completed. All shipping and/or disposal costs of test assets to and from the independent test facility will be borne by the manufacturer partner(s).

Recognizing any change in standard or test requirement may have a coincident cost; NIOSH will also be seeking to quantify the cost of change—that is, the cost of redesigning and manufacturing to meet the proposed new test standards. In this instance, NIOSH has a separate effort in place with an independent Certified Public Accountant (CPA). Any participant or partner in this effort would be required to work with the CPA in parallel with the test program outlined above. Specifically, the partner would be required to provide the underlying cost data for each product evaluated in the test program. This would include the costs for a current or comparable pre-test or pre-standard litter and its companion post standard or post redesign equivalent. Prospective partners should be aware it may be possible to consider a few products within their existing product line (*e.g.;* entry level, mid level, and high end products). These costs may include: Per unit cost of materials, per unit cost of labor, per unit cost of design, test and certification, etc. Data from each manufacturer will be held confidential by the CPA and coded to remove corporate identifiers. The goal is to assess the cost of change to the industry rather than to an individual product within a given manufacturers' broad product line.

Candidate companies will be evaluated based on their capability and willingness to work cooperatively to achieve the stated goals. Candidates selected will be required to enter into a Letter of Agreement spelling out the level of participation expected of each partner and the handling of data generated from the partnership. This announcement does not obligate NIOSH to enter into an agreement with any respondents. NIOSH reserves the right to establish a partnership based on the engineering analysis and capabilities found by way of this announcement or other searches, if determined to be in the best interest of the government.

NIOSH recognizes this opportunity will raise many questions for prospective partners. In order to give all involved the greatest opportunity to understand the process and project expectations, the NTEA–AMD, our collaborative partner and host standards setting body, has agreed to provide a meeting room for us to hold an informational meeting to present a broad overview of the effort and answer any resulting questions.

To provide us with the best opportunity to meet the needs of all prospective partners at each of these meetings, we request that all interested parties contact Jim Green, NIOSH Project Officer, by email at *JGreen@cdc.gov;* or telephone (304) 285–5857, by Thursday, March 17, 2011.

CONTACT PERSON FOR MORE INFORMATION: Jim Green, NIOSH Project Officer, e-mail: *JGreen@cdc.gov;* telephone (304) 285–5857.

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: March 7, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–5733 Filed 3–11–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0447]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Medical Devices; Third Party Review Program Under the Food and Drug Administration Modernization Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Devices; Third Party Review Program Under the Food and Drug Administration Modernization Act" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 28, 2010 (75 FR 81616), 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 0910–0375. The approval expires on February 28, 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: March 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5738 Filed 3–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0116]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on medical device labeling regulations.

DATES: Submit either electronic or written comments on the collection of information by May 13, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, PI50–400B, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device Labeling Regulations—(OMB Control Number 0910–0485)—(Extension)

Section 502 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device so that it is not misbranded and subject to a

regulatory action. Certain provisions under section 502 require manufacturers, importers, and distributors of medical devices to disclose information about themselves or the devices, on the labels or labeling for the devices. Section 502(b) of the FD&C Act requires that for packaged devices, the label must bear the name and place of business of the manufacturer, packer, or distributor as well as an accurate statement of the quantity of the contents. Section 502(f) of the FD&C Act requires that the labeling for a device must contain adequate directions for use. FDA may however, grant an exemption, if the Agency determines that the adequate directions for use labeling requirements are not necessary for the particular case, as it relates to protection of the public health.

FDA regulations under parts 800, 801, and 809 (21 CFR parts 800, 801, and 809) require disclosure of specific information by manufacturers, importers, and distributors of medical devices about themselves or the devices, on the label or labeling for the devices to health professionals and consumers. FDA issued these regulations under the authority of sections 201, 301, 502, and 701 of the FD&C Act (21 U.S.C. 321, 331, 352, and 371). Most of the regulations under parts 800, 801, and 809 are derived from requirements of section 502 of the FD&C Act, which provides in part, that a device shall be misbranded if among other things, its label or labeling fails to bear certain required information concerning the device, is false or misleading in any particular way, or fails to contain adequate directions for use.

Reporting Burden

Sections 800.10(a)(3) and 800.12(c) require that the label for contact lens cleaning solutions bear a prominent statement alerting consumers of the tamper-resistant feature. Further, § 800.12 requires that packaged contact lens cleaning solutions contain a tamper-resistant feature, to prevent malicious adulteration.

Section 800.10(b)(2) requires that the labeling for liquid ophthalmic preparations packed in multiple-dose containers provide information on the duration of use and the necessary warning information to afford adequate protection from contamination during use.

Section 801.1 requires that the label for a device in package form, contain the name and place of business of the manufacturer, packer, or distributor.

Section 801.5 requires that labeling for a device include information on intended use as defined under § 801.4 and provide adequate directions to assure safe use by the lay consumers.

Section 801.61 requires that the principal display panel of an over-the-counter (OTC) device in package form must bear a statement of the identity of the device. The statement of identity of the device must include the common name of the device followed by an accurate statement of the principal intended actions of the device.

Section 801.62 requires that the label for an OTC device in package form must bear a statement of declaration of the net quantity of contents. The label must express the net quantity in terms of weight, measure, numerical count, or a combination of numerical count and weight, measure, or size.

Section 801.109 establishes labeling requirements for prescription devices, in which the label for the device must describe the application or use of the device, and contain a cautionary statement restricting the device for sale by, or on the order of an appropriate professional.

For prescription by a licensed practitioner, § 801.110 establishes labeling requirements for a prescription device delivered to the ultimate purchaser or user. The device must be accompanied by labeling bearing the name and address of the licensed practitioner, directions for use, and cautionary statements if any, provided by the order.

Section 801.150(e) requires a written agreement between firms involved when a nonsterile device is assembled or packaged with labeling that identifies the final finished device as sterile, for which the device is ultimately introduced into interstate commerce to an establishment or contract manufacturer to be sterilized. When a written agreement complies with the requirements under § 801.150(e), FDA takes no regulatory action against the device as being misbranded or adulterated. In addition, § 801.150(e) requires that each pallet, carton, or other designated unit, be conspicuously marked to show its nonsterile nature when introduced into interstate commerce, and while being held prior to sterilization.

Section 801.405(b)(1) provides for labeling requirements for articles, including repair kits, re-liners, pads, and cushions, intended for use in temporary repairs and refitting of dentures for lay persons. Section 801.405(b)(1) also requires that the labeling contain the word "emergency" preceding and modifying each indication-for-use statement for denture repair kits and the word "temporary" preceding and modifying each indication-for-use statement for re-liners, pads, and cushions.

Section 801.405(c) provides for labeling requirements that contain essentially the same information described under § 801.405(b)(1). The information is intended to enable a lay person to understand the limitations of using OTC denture repair kits, and denture re-liners, pads, and cushions.

Section 801.420(c)(1) requires that manufacturers or distributors of hearing aids develop a user instructional brochure to be provided by the dispenser of the hearing aid to prospective users. The brochure must contain detailed information on the use and maintenance of the hearing aid.

Section 801.420(c)(4) establishes requirements that the user instructional brochure or separate labeling, provide for technical data elements useful for selecting, fitting, and checking the performance of a hearing aid. In addition, § 801.420(c)(4) provides for testing requirements to determine that the required data elements must be conducted in accordance with the American National Standards Institute's (ANSI) "Specification of Hearing Aid Characteristics," ANSI S3.22–1996 (ASA 70–1996); (Revision of ANSI S3.22–1987), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Section 801.421(b) establishes requirement for the hearing aid dispenser to provide prospective users with a copy of the user instructional brochure along with an opportunity to review comments, either orally or by the predominant method of communication used during the sale.

Section 801.421(c) establishes requirements for the hearing aid dispenser to provide a copy of the user instructional brochure to the prospective purchaser of any hearing aid upon request or, if the brochure is unavailable, provide the name and address of the manufacturer or distributor from which it may be obtained.

Section 801.430(d) establishes labeling requirements for menstrual tampons to provide information on signs, risk factors, and ways to reduce the risk of Toxic Shock Syndrome (TSS).

Section 801.430(e)(2) requires menstrual tampon package labels to provide information on the absorbency term based on testing required under § 801.430(f) and an explanation of selecting absorbencies that reduce the risk of contracting TSS.

Section 801.430(f) establishes requirements that manufacturers of

menstrual tampons devise and follow an ongoing sampling plan for measuring the absorbency of menstrual tampons. Further, manufacturers must use the method and testing parameters described under § 801.430(f).

Section 801.435(b), (c), and (h) establishes requirements for condom labeling to bear an expiration date that is supported by testing that demonstrates the integrity of three random lots of the product.

Section 809.10(a) and (b) establishes requirements that a label for an in vitro diagnostic device and the accompanying labeling (package insert), must contain information identifying its intended use, instructions for use and lot or control number, and source.

Section 809.10(d)(1) provides that the labeling requirements for general purpose laboratory reagents may be exempt from the requirements of § 809.10(a) and (b), if the labeling contains information identifying its intended use, instructions for use, lot or control number, and source.

Section 809.10(e) provides that the labeling for "Analytic Specific Reagents" (ASRs) must provide information identifying the quantity or proportion or each reagent ingredient, instructions for use, lot or control number, and source.

Section 809.10(f) provides that the labeling for OTC test sample collection systems for drugs of abuse must include information on the intended use, specimen collection instructions, identification system, and information about use of the test results. In addition, § 809.10(f) requires that this information be in a language appropriate for the intended users.

Section 809.30(d) requires that advertising and promotional materials for ASRs include the identity and purity of the ASR and the identity of the analyte.

Section 1040.20(d) provides that manufacturers of sunlamp products and ultraviolet lamps are subject to the labeling regulations under part 801.

Recordkeeping Burden

Section 801.150(a)(2) establishes recordkeeping requirements for reprocessors, relabelers, or repackagers to retain a copy of the agreement containing the specifications for the processing, labeling, or repacking of the device for 2 years after the shipment or delivery of the device. Section 801.150(a)(2) also requires that the subject respondents make copies of this agreement available for inspection at any reasonable hour to any officer or employee of the Department of Health and Human Services (HHS), upon their request.

Section 801.421(d) establishes requirements for hearing aid dispensers to retain copies of all physician statements or any waivers of medical evaluation for 3 years after dispensing the hearing aid.

Section 801.410(e) requires copies of invoices, shipping documents, and records of sale or distribution of all impact resistant lenses, including finished eyeglasses and sunglasses, be maintained for 3 years by the retailer and made available upon request by any officer or employee of FDA or by any other officer or employee acting on behalf of the Secretary of HHS.

Section 801.410(f) requires that the results of impact tests and description of the test method and apparatus be retained for a period of 3 years.

Section 801.421(d) requires hearing aid dispensers to retain a copy of any written statement from a physician required under § 801.421(a)(1), or any written statement waiving medical evaluation required under § 801.421(a)(2)(iii) for 3 years after the dispensing the hearing aid.

Section 801.435(g) requires latex condom manufacturers to document and provide, upon request, an appropriate justification for the application of the testing data from one product on any variation of that product to support expiration dating in the user labeling.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Annual frequency of response	Total annual responses	Hours per response	Total hours
800.10(a)(3) and 800.12(c)	37	100	3,700	1	3,700
800.10(b)(2)	37	100	3,700	1	3,700
801.1	23,393	6	140,358	.1	140,036
801.5	5,000	3.5	17,500	22.35	391,125
801.61	5,000	3.5	17,500	1	17,500
801.62	1,000	5	5,000	1	5,000
801.109	18,000	3.5	63,000	17.77	1,119,510
801.110	10,000	50	500,000	0.25	125,000
801.150(e)	90	20	1,800	4	7,200
801.405(b)(1)	99	1.7	168	4	673
801.405(c)	99	1.7	168	4	673
801.420(c)(1)	275	5	1,375	40	55,000
801.420(c)(4)	275	5	1,375	80	110,000
801.421(b)	10,000	160	1,600,000	0.30	480,000
801.421(c)	10,000	5	50,000	0.17	8,500
801.430(d)	45	2	90	2	180
801.430(e)(2)	45	2	90	2	180
801.430(f)	45	2	90	80	7,200
801.435(b), (c), and (h)	86	3.4	292	100	29,200
809.10(a) and (b)	1,700	6	10,200	80	816,000
809.10(d)(1)	300	2	600	40	24,000
809.10(e)	300	25	7,500	1	7,500
809.10(f)	20	1	20	100	2,000
809.30(d)	300	25	7,500	1	7,500
1040.20(d)	110	1	110	10	1,100
Total					3,362,477

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED AVERAGE ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Annual frequency of recordkeeping	Total annual records	Hours per record	Total hours
801.150(a)(2)	57	1	57	0.50	29
801.410(e) and (f)	30	924,100	27,723,000	0.0008	22,178
801.421(d)	10,000	160	1,600,000	0.25	400,000
Total					422,207

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The medical device labeling regulations also refer to previously approved collections of information found in FDA regulations. The collections of information under § 800.12(d) and 801.437(i) have been approved under OMB control number 0910–0183; the collections of information under § 800.12(e) have been approved under OMB control number 0910–0231; and the collections of information under § 801.435(g) have been approved under OMB control number 0910–0073.

Further, FDA concludes that labeling statements under §§ 801.63, 801.405(b)(2) and (b)(3), 801.420(c)(2) and (c)(3), 801.430(c) and (e)(1), 801.433, 801.437(d) through (g), and 809.30(d)(2), (d)(3), and (e) do not constitute a "collection of information" under the PRA. Rather, these labeling statements are "public disclosure" of information originally supplied by the Federal Government to the recipient for the purpose of "disclosure to the public" (5 CFR 1320.3(c)(2)).

Reporting

These estimates are based on FDA's registration and listing database for medical device establishments and FDA's knowledge of and experience with device labeling.

Recordkeeping

These estimates are based on FDA's registration and listing database for medical device establishments, Agency communications with industry, and FDA's knowledge of and experience with device labeling.

The medical device labeling regulations also refer to previously approved collections of information. The collections of information under §§ 800.12(d) and 801.437(i) have been approved under OMB control number 0910–0183; and the collections of information under § 800.12(e) have been approved under OMB control number 0910–0231.

The information collection requirements under §§ 801.63, 801.405(b)(2) and (b)(3), 801.420(c)(2) and (c)(3), 801.430(c) and (e)(1), 801.433, 801.437(d) through (g), and 809.30(d)(2), (d)(3), (e) are not considered information collection because the public information is originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)).

Dated: March 4, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5739 Filed 3–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0129]

Agency Information Collection Activities; Proposed Collection; Comment Request; Comparing Nutrition Knowledge, Attitude, and Behavior Among English-Dominant Hispanics, Spanish-Dominant Hispanics, and Other Consumers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a study entitled "Comparing Nutrition Knowledge, Attitude, and Behavior Among English-Dominant Hispanics, Spanish-dominant Hispanics, and Other Consumers."

DATES: Submit either electronic or written comments on the collection of information by May 13, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques, when appropriate, and other forms of information technology.

Comparing Nutrition Knowledge, Attitude, and Behavior Among English-Dominant Hispanics, Spanish-Dominant Hispanics, and Other Consumers—(OMB Control Number 0910–NEW)

I. Background

Recent estimates suggest that Hispanics (defined as those who identify themselves as of Hispanic or Latino origin) are the largest and fastest growing minority group in the nation; the proportion of the U.S. population that was Hispanic was 14 percent in 2005 and is projected to increase to 29 percent in 2050 (Ref. 1).

Data from the Centers for Disease Control and Prevention (CDC) indicate that, in 2005 and 2006, 34.3 percent and 32.7 percent of the U.S. adult population are obese and overweight, respectively (Ref. 1). According to CDC, Hispanics had 21 percent higher obesity prevalence than Whites in 2008 (Ref. 2). CDC data also indicate variations in prevalence of obesity among adults of different race-gender groups; for example, during 2006 through 2008, non-Hispanic Blacks had the greatest prevalence of obesity (35.7 percent), followed by Hispanics (28.7 percent), and non-Hispanic Whites (23.7 percent); non-Hispanic Black women had the greatest prevalence (39.2 percent), followed by non-Hispanic Black men (31.6 percent), Hispanic women (29.4 percent), Hispanic men (27.8 percent), non-Hispanic White men (25.4 percent), and non-Hispanic White women (21.8 percent) (Ref. 2).

While some Hispanics living in the United States use the English language exclusively or more often than Spanish (English-dominant Hispanics), other U.S. Hispanics predominantly use the Spanish language in their daily lives (Spanish-dominant Hispanics) (Ref. 4). Since most U.S. food labels are in English, Spanish-dominant Hispanics' understanding and use of food labels may differ from that of English-dominant Hispanics and of non-Hispanics who use English exclusively. In addition, both English-dominant Hispanics and Spanish-dominant Hispanics may have different awareness, perceptions, and behaviors than English-speaking non-Hispanics on issues of health, nutrition, and food consumption (Refs. 5 through 9).

Existing research suggests that, in addition to language and other demographic differences, acculturation is an important factor associated with individual differences in dietary and public health related perceptions, attitudes, and behaviors among Hispanics. Acculturation is defined as the change in behavior and values by immigrants when they come in contact with a new group, nation, or culture (Ref. 10). Immigrants may possess different degrees of acculturation depending on the time of migration and other factors, such as the dominant culture of the neighborhoods where they live and work and type of education received (Refs. 11 and 12). Hence, variation in the degree of acculturation can lead to differences in lifestyle and behaviors, including behaviors related to dietary choices and to use and understanding of nutrition information on food labels, because of English proficiency and degree of assimilation into the values, lifestyles, and diets prevalent in this country. The existing research has shown the influence of acculturation on Hispanics' perceptions, attitudes, and behaviors relating to public health factors including dietary practices, nutrition, the health practices of pregnant women, obesity, coronary heart disease, Type 2 diabetes, alcohol consumption, and smoking behavior (for example, Refs. 11 and 13 through 22).

FDA needs an understanding of how different population groups perceive and behave in terms of food label understanding and use, nutrition, and health to inform possible measures that the Agency may take to help consumers make informed dietary choices. FDA is aware of no consumer research on a nationwide level of the impact of language and acculturation on Hispanics' dietary choices and label use. This study is intended to provide answers to research questions such as whether and how much Spanish-dominant Hispanics, English-dominant Hispanics, and English-speaking non-Hispanics differ in their knowledge, attitude, and behavior toward food label use, nutrition, and health among three population groups and the role that demographic and other factors may play in any differences.

The proposed study will use a Web-based survey to collect information from 2,400 adult members in online consumer panels maintained by a contractor. The study plans to randomly select 800 members into each of three groups: Spanish-dominant Hispanics, English-dominant Hispanics, and English-speaking non-Hispanics. Either an English or a Spanish questionnaire will be used, as appropriate. The study plans to include topics such as: (1) Nutrition and health; (2) use and understanding of food labels and labeling information; (3) degree of capacity to understand and use health information; and (4) levels of acculturation among Hispanic respondents as measured by a Hispanic acculturation scale that is widely used in social science research (Ref. 23). To help understand the data, the study will also collect information on participants' background, including, but not limited to, health status and demographic characteristics, such as age, gender, education, and income.

The study is part of the Agency's continuing effort to enable consumers to make informed dietary choices and construct healthful diets. The results of the study will not be used to develop population estimates. The results of the study will be used for informing possible measures that the Agency may take to help consumers make informed dietary choices.

To help design and refine the questionnaire, we plan to conduct cognitive interviews by screening 72 adult panelists in order to obtain 9 participants in the interviews. Each screening is expected to take 5 minutes (0.083 hour) and each cognitive interview is expected to take 0.5 hour. The total for cognitive interview activities is 11 hours (6 hours + 5 hours). Subsequently, we plan to conduct two waves of pretests of the questionnaire before it is administered in the study. We expect that 960 invitations, each taking 2 minutes (0.033 hour), will need to be sent to adult members of the online consumer panels to have 180 of them complete a 15-minute (0.25 hour) pretest. The total for the pretest activities is 77 hours (32 hours + 45 hours). For the survey, we estimate that 19,200 invitations, each taking 2 minutes (0.033 hour) to complete, will need to be sent to adult members of the online consumer panels to have 2400 of them complete a 15-minute (0.25 hour) questionnaire. The total for the survey activities is 1,234 hours (634 hours + 600 hours). Thus, the total estimated burden is 1,322 hours. FDA's burden estimate is based on prior experience with research that is similar to this proposed study.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Portion of study	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Cognitive interview screener	72	1	72	0.083	6
Cognitive interview	9	1	9	0.5	5
Pretest invitation	960	1	960	0.033	32
Pretest	180	1	180	0.25	45
Survey invitation	19,200	1	19,200	0.033	634
Survey	2,400	1	2,400	0.25	600
Total					1,322

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register.**)

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2. CDC, "Differences in Prevalence of Obesity Among Black, White, and Hispanic Adults—United States, 2006–2008, "*Morbidity and Mortality Weekly Report,* 58(27): 740–744, available at *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5827a2.htm,* July 17, 2009.

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13. Otero-Sabogal, R., F. Sabogal, E.J. Pérez-Stable, et al., "Dietary Practices, Alcohol Consumption, and Smoking Behavior: Ethnic, Sex, and Acculturation Differences," *Journal of National Cancer Institute Monograph,* 18: 73–82, 1995.

14. Lara, M., C. Gamboa, M.I. Kahramanian, et al., "Acculturation and Latino Health in the United States: A Review of the Literature and Its Sociopolitical Context," *Annual Review of Public Health* 26: 367–397. 2005.

15. Winkleby, M.A., S.P. Fortmann, and B. Rockhill, "Health-Related Risk Factors in a Sample of Hispanics and Whites Matched on Sociodemographic Characteristics: The Stanford Five-City Project." *American Journal of Epidemiology,* 137(12): 1365–75, June 15, 1993.

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18. Dixon, L.B., J. Sundquist, and M. Winkleby, "Differences in Energy, Nutrient, and Food Intakes in a US Sample of Mexican-American Women and Men: Findings from the Third National Health and Nutrition Examination Survey," 1988–1994, *American Journal of Epidemiology,* 152(6): 548–57, 2000.

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Dated: March 4, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5736 Filed 3–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0112]

Draft Guidance for Industry on Chemistry, Manufacturing, and Controls Information—Fermentation-Derived Intermediates, Drug Substances, and Related Drug Products for Veterinary Medicinal Use; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry #216 entitled "Chemistry, Manufacturing, and Controls (CMC) Information—Fermentation-Derived Intermediates, Drug Substances, and Related Drug Products for Veterinary Medicinal Use". The purpose of this document is to provide recommendations on what documentation to submit to support the CMC information for fermentation-derived intermediates, drug substances, and related drug products for veterinary medicinal use.

DATES: Although you can comment on any guidance at any time (*see* 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 30, 2011.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

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

FOR FURTHER INFORMATION CONTACT: Michael J. Popek, Center for Veterinary Medicine (HFV–144), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8269, *e-mail: michael.popek@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry #216 entitled "Chemistry, Manufacturing, and Controls (CMC) Information—Fermentation-Derived Intermediates, Drug Substances, and Related Drug Products for Veterinary Medicinal Use." This draft guidance provides recommendations on what documentation to submit to support the CMC information for fermentation-derived intermediates, drug substances, and related drug products for veterinary medicinal use. This information is filed to CVM in a new animal drug application (NADA), conditional NADA, investigational new animal drug file, abbreviated NADA, generic investigational new animal drug file, drug master file, or veterinary master file.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this draft guidance have been approved under OMB control number 0910–0032 (expiration date April 30, 2011).

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: March 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5816 Filed 3–11–11; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0108]

Revised Draft Guidance for Industry on User Fee Waivers, Reductions, and Refunds for Drug and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry entitled "User Fee Waivers, Reductions, and Refunds for Drug and Biological Products." This revised draft guidance provides recommendations to applicants considering whether to request a waiver or reduction in user fees. This guidance is a revision of the draft guidance entitled "Draft Interim Guidance Document for Waivers of and Reductions in User Fees," issued July 16, 1993.

DATES: Although you can comment on any guidance at any time (*see* 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by June 13, 2011.

Submit written comments on the proposed collection of information by May 13, 2011.

ADDRESSES: Submit written requests for single copies of the revised draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring,

MD 20993–0002 or the Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit electronic comments on the revised draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Michael Jones, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 51, rm. 6216, Silver Spring, MD 20993–0002, 301–796–3602, or Stephen Ripley, Center for Biologics Evaluation and Research, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled "User Fee Waivers, Reductions, and Refunds for Drug and Biological Products." This revised draft guidance provides recommendations for applicants planning to request waivers or reductions in user fees assessed under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act). This revised draft guidance describes the types of waivers and reductions permitted under the user fee provisions of the FD&C Act, and the procedures for submitting requests for waivers or reductions and requests for reconsideration and appeal. The revised draft guidance also provides clarification on related issues such as user fee exemptions for orphan drugs. After comments are received and considered, FDA intends to promptly issue a final guidance.

This revised draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on user fee waivers and reductions for drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this draft guidance, FDA invites comments on the following topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

The draft guidance describes how to submit requests for waivers, reductions, and refunds of certain user fees. It also includes recommendations for submitting information for requests for reconsideration of denials of waiver or reduction requests, and for requests for appeals. We estimate that the total annual number of waiver requests submitted for all of these categories will be 90, submitted by 75 different sponsors. We estimate that the average burden hours for preparation of a submission will total 16 hours. Because FDA may request additional information from the applicant during the review period, we have also included in this estimate time to prepare any additional information.

The reconsideration and appeal requests are not addressed in the FD&C Act but are discussed in the draft guidance. We estimate that we will receive three requests for reconsideration annually, and that the total average burden hours for a reconsideration request will be 24 hours. We estimate that we will receive one request annually for an appeal of a user fee waiver determination, and that the time needed to prepare an appeal would be approximately 12 hours. Reconsideration requests are sent to the Associate Director for Policy at the Center for Drug Evaluation and Research (CDER), and requests for appeals are sent to the User Fee Appeals Officer at FDA, with a copy to the Associate Director for Policy at CDER. We have also included in this estimate both the time needed to prepare the request for appeal and the time needed to create and send a copy of the request for an appeal to the Associate Director for Policy at CDER.

The burden for filling out and submitting Form FDA 3397 (Prescription Drug User Fee Coversheet) has not been included in the burden analysis, because that information collection is already approved by OMB under OMB control number 0910–0297. The collections of information associated with a new drug application or biologics license application have been approved under OMB control numbers 0910–0001 and 0910–0338, respectively.

We have included in the burden estimate the preparation and submission of application fee waivers for small businesses, because small businesses requesting a waiver must submit documentation to FDA on the number of their employees and must include the information that the application is the first human drug application, within the meaning of the FD&C Act, to be submitted to the Agency for approval. Because the Small Business Administration (SBA) makes the size determinations for FDA, small businesses must also submit information to the SBA. The submission of information to SBA is already approved by OMB under OMB control number 3245–0101. FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Total number of waiver requests annually	Annual frequency per response	Number of sponsors/ applicants	Total average burden hours	Total hours
Federal Food, Drug, and Cosmetic Act Section 736	90	1.2	75	16	1,440
Reconsideration Requests	3	1	3	24	72
Appeal Requests	1	1	1	12	12
Total					1,524

[1] There are no capital operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) written or electronic comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov.BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/guidances/default.htm,* or *http://www.regulations.gov.*

Dated: March 4, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 026

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication, entitled "Modifications to the List of Recognized Standards, Recognition List Number: 026" (Recognition List Number: 026), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written or electronic comments concerning this document at any time. *See* section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies of "Modifications to the List of Recognized Standards, Recognition List Number: 026" to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–847–8149. Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (*see* **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments by e-mail: *standards@cdrh.fda.gov.* This document may also be accessed on FDA's Internet site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm. See* section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 026 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3632, Silver Spring, MD 20993, 301–796–6574.

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled "Recognition and Use of Consensus Standards." The notice described how FDA would implement its standard recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register**, are identified in Table 1 as follows:

TABLE 1—PREVIOUS PUBLICATIONS OF STANDARD RECOGNITION LISTS

February 25, 1998 (63 FR 9561).
October 16, 1998 (63 FR 55617).
July 12, 1999 (64 FR 37546).
November 15, 2000 (65 FR 69022).
May 7, 2001 (66 FR 23032).
January 14, 2002 (67 FR 1774).
October 2, 2002 (67 FR 61893).
April 28, 2003 (68 FR 22391).
March 8, 2004 (69 FR 10712).
June 18, 2004 (69 FR 34176).
October 4, 2004 (69 FR 59240).
May 27, 2005 (70 FR 30756).
November 8, 2005 (70 FR 67713).
March 31, 2006 (71 FR 16313).
June 23, 2006 (71 FR 36121).
November 3, 2006 (71 FR 64718).
May 21, 2007 (72 FR 28500).
September 12, 2007 (72 FR 52142).
December 19, 2007 (72 FR 71924).
September 9, 2008 (73 FR 52358).
March, 18, 2009 (74 FR 11586).
September 8, 2009 (74 FR 46203).
May 5, 2010 (75 FR 24711).
June 10, 2010 (75 FR 32943).
October 4, 2010 (75 FR 61148).

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains "hypertext markup language (HTML)" and "portable document format (PDF)" versions of the list of "FDA Recognized Consensus Standards." Both versions are publicly accessible at the Agency's Internet site. *See* section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 026

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA will use the term "Recognition List Number: 026" to identify these current modifications.

In table 2 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the Agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
		A. Anesthesia	
1–56		CGA V–7.1 1997 (R2003) (2008) Standard Method of Determining Cylinder Valve Outlet Connections for Medical Gases—First Edition.	Reaffirmation.
		B. Biocompatibility	
2–96	2–162	ASTM F1903–10 Standard Practice for Testing For Biological Responses to Particles In Vitro.	Withdrawn and replaced with newer version.
2–117		ANSI/AAMI/ISO 10993–3:2003/(R)2009 Biological evaluation of medical devices—Part 3: Tests for genotoxicity, carcinogenicity, and reproductive toxicity.	Extent of recognition.
		C. Cardiovascular	
3–54		ANSI/AAMI/ISO 7198:1998/2001/(R)2010 Cardiovascular implants—Tubular vascular prostheses.	Reaffirmation.
3–58		ANSI/AAMI/ISO 5840:2005/(R)2010 Cardiovascular implants—Cardiac valve prostheses.	Reaffirmation.
3–66		ASTM F 2081–06 Standard Guide for Characterization and Presentation of the Dimensional Attributes of Vascular Stents.	Device affected, Processes impacted, Type of standard, CFR citation and product codes, and Contact person.
		D. Dental/ENT	
4–89		ADA Specification No. 53 Polymer-Based Crowns and Bridge Resins	Reaffirmation.
4–111		ADA Specification No. 13 Denture Cold-Curing Repair Resins: 1981 (Reaffirmed 2006).	Withdrawn.
4–112		ADA Specification No. 16 Dental Impression Paste—Zinc Oxide Eugenol Type.	Withdrawn.
4–124	4–191	ANSI/ASA S3.22–2009 American National Standard Specification of Hearing Aid Characteristics.	Withdrawn and replaced with newer version.
4–127	4–192	ADA Specification 58 Root Canal Files, Type H (Hedstrom) 2007	Withdrawn and replaced with newer version.
4–138	4–193	ADA Specification No. 15 Artificial Teeth for Dental Prostheses	Withdrawn and replaced with newer version.
4–148	4–194	ADA Specification No. 78 Dental Obturating Cones	Withdrawn and replaced with newer version.
4–158		ISO 10139–1:2005 Dentistry—Soft lining materials for removable dentures—Part 1: Materials for short-term use Technical Corrigendum 1:2006.	Withdrawn duplicate. *See* 4–189.
		E. General Hospital/General Plastic Surgery	
6–144	6–243	ASTM D5712–10 Standard Test Method for Analysis of Aqueous Extractable Protein in Natural Rubber and Its Products Using the Modified Lowry Method.	Withdrawn and replaced with a newer version.
6–145		ASTM D3578–05 Standard Specification for Rubber Examination Gloves	Reaffirmation.
6–149		ASTM D7160–05 (Reapproved 2010) Standard Practice for Determination of Expiration Dating for Medical Gloves.	Reaffirmation.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
6–150		ASTM D7161–05 (Reapproved 2010) Standard Practice for Determination of Real Time Expiration Dating of Mature Medical Gloves Stored Under Typical Warehouse Conditions.	Reaffirmation.
6–165		ASTM D6977–04 (Reapproved 2010) Standard Specification for Polychloroprene Examination Gloves for Medical Application.	Reaffirmation.
6–167	6–244	ASTM D6319–10 Standard Specification for Nitrile Examination Gloves for Medical Application.	Withdrawn and replaced with newer version.
6–169		ASTM D3772–01 (Reapproved 2010) Standard Specification for Natural Rubber Finger Cots.	Reaffirmation.
6–201	6–245	ISO 8536–4 Fifth edition 2010–10–01 Infusion equipment for medical use—Part 4: Infusion sets for single use, gravity feed.	Withdrawn and replaced with newer version.
6–218	6–246	USP 33–NF 28 2010 <11> Nonabsorbable Surgical Suture	Withdrawn and replaced with newer version.
6–220	6–247	USP 33–NF 28 2010 Absorbable Surgical Suture	Withdrawn and replaced with newer version.
6–221	6–248	USP 33–NF 28 2010 <881> Tensile Strength	Withdrawn and replaced with newer version.
6–222	6–249	USP 33–NF 28 2010 <861> Suture–Diameter	Withdrawn and replaced with newer version.
6–223	6–250	USP 33–NF 28 2010 <871> Sutures—Needle Attachment	Withdrawn and replaced with newer version.
6–224	6–251	USP 33 NF–28 2010 <11> Sterile Water for Irrigation	Withdrawn and replaced with newer version.
6–225	6–252	USP 33 NF–28 2010 <11> Heparin Lock Flush Solution	Withdrawn and replaced with newer version.
		F. IVD	
7–183		CLSI M38–A2 Reference Method for Broth Dilution Antifungal Susceptibility Testing of Filamentous Fungi.	Withdrawn duplicate. *See* 7–171.
7–188	7–218	CLSI M45–A2 Methods for Antimicrobial Dilution and Disk Susceptibility Testing of Infrequently Isolated or Fastidious Bacteria; Approved Guideline—Second Edition.	Withdrawn and replaced with newer version.
		G. Materials	
8–10		ASTM F603–00 Standard Specification for High-Purity Dense Aluminum Oxide for Surgical Implant Application.	Withdrawn.
8–88	8–195	ASTM F2024–10 Standard Practice for X–Ray Diffraction Determination of Phase Content of Plasma-Sprayed Hydroxyapatite Coatings.	Withdrawn and replaced with newer version.
8–101		ASTM F 2118—03 (Reapproved 2009) Standard Test Method for Constant Amplitude of Force Controlled Fatigue Testing of Acrylic Bone Cement Materials.	Reaffirmation.
8–103		ASTM F1801—97 (Reapproved 2009)ε[1] Standard Practice for Corrosion Fatigue Testing of Metallic Implant Materials.	Reaffirmation.
8–107		ASTM F746—04 (Reapproved 2009) ε[1] Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials.	Reaffirmation.
8–117		ASTM F86—04 (Reapproved 2009) Standard Practice for Surface Preparation and Marking of Metallic Surgical Implants.	Reaffirmation.
		H. OB–GYN/Gastroenterology	
9–47		AAMI RD16 Cardiovascular implants and artificial organs—Hemodialyzers, hemodiafilters.	Withdrawn. *See* 9–65.
9–48		AAMI RD17 Cardiovascular implants and artificial organs—Extracorporeal blood circuit for hemodialyzers, hemodiafilters, and hemofilters.	Withdrawn. *See* 9–66.
9–50		ANSI/AAMI RD52:2004/(R)2010 and ANSI/AAMI RD52:2004/A1:2007/(R)2010, A2:2007/(R)2010, A3:2009, & A4:2009 (Consolidated Text) Dialysate for haemodialysis.	Reaffirmation.
9–51	9–65	ANSI/AAMI/ISO 8637:2010 Cardiovascular implants and extracorporeal systems—Hemodialyzers, hemodiafilters, hemofilters and hemoconcentrators.	Withdrawn and replaced with newer version.
9–52	9–66	ANSI/AAMI/ISO 8638:2010 Cardiovascular implants and extracorporeal systems—Extracorporeal blood circuit for hemodialyzers, hemodiafilters and hemofilters.	Withdrawn and replaced with newer version.
9–55		ANSI/AAMI RD62:2006 and ANSI/AAMI RD62:2006/A1:2009 Water treatment equipment for haemodialysis applications.	Reaffirmation.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
		I. Orthopedics	
11–168	.....	ASTM F 1781–03 (Reapproved 2009) Standard Specification for Elastomeric Flexible Hinge Finger Total Joint Implants.	Reaffirmation.
11–183	.....	ASTM F1875–98 (Reapproved 2009) Standard Practice for Fretting Corrosion Testing of Modular Implant Interfaces: Hip Femoral Head-Bore and Cone Taper Interface.	Reaffirmation.
		J. Physical Medicine	
16–30	16–167	ISO 7176–9: Third edition, 2009–11–15 Wheelchairs—Part 9: Climatic tests for electric wheelchairs.	Withdrawn and replaced with newer version.
16–31	16–168	RESNA WC–1: 2009 American National Standard for Wheelchairs-Volume 1: Requirements and Test Methods for Wheelchairs (including Scooters) Section 1: Determination of static stability.	Withdrawn and replaced with newer version.
16–32	16–169	RESNA WC–2: 2009 American National Standard for Wheelchairs-Volume 2: Additional Requirements for Wheelchairs (including Scooters) with Electrical Systems Section 2: Determination of dynamic stability of electrically powered wheelchairs.	Withdrawn and replaced with newer version.
16–33	16–170	RESNA WC–2: 2009 American National Standard for Wheelchairs-Volume 2: Additional Requirements for Wheelchairs (including Scooters) with Electrical Systems Section 3: Determination of effectiveness of brakes.	Withdrawn and replaced with newer version.
16–34	16–171	RESNA WC–2: 2009 American National Standard for Wheelchairs-Volume 2: Additional Requirements for Wheelchairs (including Scooters) with Electrical Systems Section 4: Energy consumption of electrically powered wheelchairs and scooters for determination of theoretical distance range.	Withdrawn and replaced with newer version.
16–35	16–172	RESNA WC–1: 2009 American National Standard for Wheelchairs-Volume 1: Requirements and Test Methods for Wheelchairs (including Scooters) Section 5: Determination of dimensions, mass and maneuvering space.	Withdrawn and replaced with newer version.
16–36	16–173	RESNA WC–2: 2009 American National Standard for Wheelchairs-Volume 2: Additional Requirements for Wheelchairs (including Scooters) with Electrical Systems Section 6: Determination of maximum speed, acceleration and deceleration of electrically powered wheelchairs.	Withdrawn and replaced with newer version.
16–37	16–174	RESNA WC–1: 2009 American National Standard for Wheelchairs-Volume 1: Requirements and Test Methods for Wheelchairs (including Scooters) Section 7: Method of Measurement of Seating and Wheel Dimensions.	Withdrawn and replaced with newer version.
16–38	16–175	RESNA WC–1: 2009 American National Standard for Wheelchairs-Volume 1: Requirements and Test Methods for Wheelchairs (including Scooters) Section 8: Requirements and test methods for static, impact and fatigue strengths.	Withdrawn and replaced with newer version.
16–39	16–176	RESNA WC–2: 2009 American National Standard for Wheelchairs-Volume 2: Additional Requirements for Wheelchairs (including Scooters) with Electrical Systems Section 9: Climatic tests for electrically powered wheelchairs.	Withdrawn and replaced with newer version.
16–40	16–177	RESNA WC–2: 2009 American National Standard for Wheelchairs-Volume 2: Additional Requirements for Wheelchairs (including Scooters) with Electrical Systems Section 10: Determination of obstacle-climbing ability of electrically powered wheelchairs.	Withdrawn and replaced with newer version.
16–41	16–178	RESNA WC–1: 2009 American National Standard for Wheelchairs-Volume 1: Requirements and Test Methods for Wheelchairs (including Scooters) Section 11: Test dummies.	Withdrawn and replaced with newer version.
16–42	16–179	RESNA WC–1: 2009 American National Standard for Wheelchairs-Volume 1: Requirements and Test Methods for Wheelchairs (including Scooters) Section 13: Determination of coefficient of friction of test surfaces.	Withdrawn and replaced with newer version.
16–43	16–180	RESNA WC–2: 2009 American National Standard for Wheelchairs-Volume 2: Additional Requirements for Wheelchairs (including Scooters) with Electrical Systems Section 14: Power and control systems for electrically powered wheelchairs—Requirements and test methods.	Withdrawn and replaced with newer version.
16–44	16–181	RESNA WC–1: 2009 American National Standard for Wheelchairs-Volume 1: Requirements and Test Methods for Wheelchairs (including Scooters) Section 15: Requirements for information disclosure, documentation and labeling.	Withdrawn and replaced with newer version.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
16–45	16–182	RESNA WC–1: 2009 American National Standard for Wheelchairs-Volume 1: Requirements and Test Methods for Wheelchairs (including Scooters) Section 16: Resistance to ignition of upholstered parts—Requirements and test methods.	Withdrawn and replaced with newer version.
16–46	16–183	RESNA WC–1: 2009 American National Standard for Wheelchairs-Volume 1: Requirements and Test Methods for Wheelchairs (including Scooters) Section 20: Determination of the performance of stand-up type wheelchairs.	Withdrawn and replaced with newer version.
16–47	16–184	RESNA WC–1: 2009 American National Standard for Wheelchairs-Volume 1: Requirements and Test Methods for Wheelchairs (including Scooters) Section 22: Set-up procedures.	Withdrawn and replaced with newer version.
16–48		ANSI/RESNA WC/Volume 1–1998, Section 93: Maximum Overall Dimensions.	Withdrawn.
16–49		ANSI/RESNA WC/Volume 1–1998, Section 0: Nomenclature, Terms, and Definitions.	Withdrawn.
16–160	16–185	RESNA WC–2: 2009 American National Standard for Wheelchairs-Volume 2: Additional Requirements for Wheelchairs (including Scooters) with Electrical Systems Section 21: Requirements and test methods for electromagnetic compatibility of electrically powered wheelchairs and motorized scooters.	Withdrawn and replaced with newer version.
16–161	16–186	ASME A18.1–2008 (Revision of ASME A18.1–2005) Safety Standard for Platform Lifts and Stairway Chairlifts.	Withdrawn and replaced with newer version.
		K. Radiology	
12–122	12–217	IEC 62083 Edition 2.0:2009–09 Medical electrical equipment—Requirements for the safety of radiotherapy treatment planning systems.	Withdrawn and replaced with newer version.
12–36		IEC 60601–2–9 (1996–10) Medical electrical equipment—Part 2: Particular requirements for the safety of patient contact dosimeters used in radiotherapy with electrically connected radiation detectors—Ed. 2.0..	Withdrawn.
12–183	12–218	NEMA PS 3.1—3.18 (2009) Digital Imaging and Communications in Medicine (DICOM) Set.	Withdrawn and replaced with newer version.
		L. Software/Informatics	
13–4		UL 1998 Standard for Safety Software in Programmable Components, Second Edition.	Reaffirmation.
		M. Sterility	
14–265	14–301	USP 33:2010 <61> Microbiological Examination of Nonsterile Products: Microbial Enumeration Tests.	Withdrawn and replaced with newer version.
14–266	14–302	USP 33: 2010 <71> Sterility Tests	Withdrawn and replaced with newer version.
14–267	14–303	USP 33:2010 <85> Bacterial Endotoxins Test	Withdrawn and replaced with newer version.
14–268	14–304	USP 33:2010 <151> Pyrogen Test	Withdrawn and replaced with newer version.
14–269	14–305	USP 33:2010 <161> Transfusion and Infusion Assemblies and Similar Medical Devices.	Withdrawn and replaced with newer version.
14–270	14–306	USP 33:2010 Biological Indicators for Steam Sterilization, Self-Contained.	Withdrawn and replaced with newer version.
14–271	14–307	USP 33:2010 Biological Indicator for Dry-Heat Sterilization, Paper Carrier.	Withdrawn and replaced with newer version.
14–272	14–308	USP 33:2010 Biological Indicator for Ethylene Oxide Sterilization, Paper Carrier.	Withdrawn and replaced with newer version.
14–273	14–309	USP 33:2010 Biological Indicator for Steam Sterilization, Paper Carrier	Withdrawn and replaced with newer version.
14–278	14–310	USP 33:2010 <62> Microbiological Examination of Nonsterile Products: Tests for Specified Microorganisms.	Withdrawn and replaced with newer version.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 3 of this document, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 026.

TABLE 3—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference No. and date
	A. Anesthesia	
1–84	Anaesthetic and respiratory equipment—Tracheostomy tubes—Part 3: Paediatric tracheostomy tubes TECHNICAL CORRIGENDUM 1.	ISO 5366–3:2001 TECHNICAL CORRIGENDUM 1.
	B. Biocompatibility	
2–163	Biological evaluation of medical devices—Part 9: Framework for identification and quantification of potential degradation products.	ANSI/AAMI/ISO 10993–9:2009.
2–164	Biological evaluation of medical devices—Part 13: Identification and quantification of degradation products from polymeric medical devices.	ANSI/AAMI/ISO 10993–13:2010.
2–165	Biological evaluation of medical devices—Part 14: Identification and quantification of degradation products from ceramics.	ANSI/AAMI/ISO 10993–14:2001.
2–166	Biological evaluation of medical devices—Part 16: Toxicokinetic study design for degradation products and leachables.	ANSI/AAMI/ISO 10993–16:2010.
2–167	Biological evaluation of medical devices—Part 19: Physico-chemical, morphological and topographical characterization of materials.	ISO/TS 10993–19 First edition 2006–06–01.
2–168	Biological evaluation of medical devices— Part 9: Framework for identification and quantification of potential degradation products.	ISO 10993–9 Second edition 2009–12–15.
2–169	Biological evaluation of medical devices—Part 13: Identification and quantification of degradation products from polymeric medical devices.	ISO 10993–13 First edition 1998–11–15.
2–170	Biological evaluation of medical devices—Part 14: Identification and quantification of degradation products from ceramics.	ISO 10993–14 First edition 2001–11–15.
2–171	Biological evaluation of medical devices—Part 16: Toxicokinetic study design for degradation products and leachables.	ISO 10993–16 Second edition 2010–02–15.
2–172	Biological evaluation of medical devices—Part 19: Physico-chemical, morphological, and topographical characterization of materials.	ANSI/AAMI/ISO TIR10993–19:2006.
	C. Cardiovascular	
3–83	Implants for surgery—Active implantable medical devices—Part 5: Circulatory support devices.	ANSI/AAMI/ISO 14708–5:2010.
3–84	Cardiovascular implants—Endovascular devices—Part 1: Endovascular prostheses Amendment 1: Test methods.	ANSI/AAMI/ISO 25539–1:2003/A1:2005/(R)2009.
3–85	Cardiovascular implants—Endovascular devices—Part 2: Vascular stents.	ANSI/AAMI/ISO 25539–2:2008.
3–86	Standard Guide for Measuring Securement of Balloon Expandable Vascular Stent Mounted on Delivery System.	ASTM F 2394–07.
3–87	Standard Test Methods for in vitro Pulsatile Durability Testing of Vascular Stents.	ASTM F 2477–07.
3–88	Standard Guide for Finite Element Analysis (FEA) of Metallic Vascular Stents Subjected to Uniform Radial Loading.	ASTM F 2514–08.
3–89	Active implantable medical devices—Four-pole connector system for implantable cardiac rhythm management devices—Dimensional and test requirements.	ISO 27186 First edition 2010–03–15.
3–90	Cardiovascular implants—Tubular vascular prostheses	ISO 7198 First edition 1998–08–01.
3–91	Cardiovascular implants—Cardiac valve prostheses	ISO 5840 Fourth edition 2005–03–01.
3–92	Implants for surgery—Active implantable medical devices—Part 5: Circulatory support devices.	ISO 14708–5 First edition 2010–02–01.
3–93	Cardiovascular implants—Endovascular device—Part 1: Endovascular prostheses AMENDMENT 1: Test methods.	ISO 25539–1 First edition 2001–11–13 AMENDMENT 1 2005–07–15.
3–94	Cardiovascular implants—Endovascular devices—Part 2: Vascular stents.	ISO 25539–2 First edition 2008–09–01.
	D. General	
5–63	Small-bore connectors for liquids and gases in healthcare applications—Part 1: General requirements.	ISO 80369–1 First edition 2010–12–15.
5–64	Small bore connectors for liquids and gases in healthcare applications—Part 1: General requirements.	AAMI/ISO/FDS–1 80369–01 2010.
	E. Materials	
8–196	Implants for surgery—Metallic materials—Part 1: Wrought stainless steel TECHNICAL CORRIGENDUM 1.	ISO 5832–1:2007 TECHNICAL CORRIGENDUM 1 2008–04–15.
8–197	Implants for surgery—Metallic materials—Part 12: Wrought cobalt-chromium-molybdenum alloy TECHNICAL CORRIGENDUM 1.	ISO 5832–12:2007 TECHNICAL CORRIGENDUM 1 2008–09–15.
8–198	Standard Guide for Evaluating the Extent of Oxidation in Ultra-High-Molecular-Weight Polyethylene Fabricated Forms Intended for Surgical Implants.	ASTM F 2102–06ε[1].

TABLE 3—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
8–199	Standard Specification for Wrought Seamless Nickel-Titanium Shape Memory Alloy Tube for Medical Devices and Surgical Implants.	ASTM F 2633–07.
8–200	Standard Practice for Accelerated Aging of Ultra-High Molecular Weight Polyethylene after Gamma Irradiation in Air.	ASTM F 2003–02 (Reapproved 2008).
8–201	Standard Test Method for In Situ Determination of Network Parameters of Crosslinked Ultra High Molecular Weight Polyethylene (UHMWPE).	ASTM F 2214–02 (Reapproved 2008).
8–202	Standard Test Method for Small Punch Testing of Ultra-High Molecular Weight Polyethylene Used in Surgical Implants.	ASTM F 2183–02 (Reapproved 2008).
	F. Nanotechnology	
18–1	Standard Guide for Measurement of Particle Size Distribution of Nanomaterials in Suspension by Photon Correlation Spectroscopy (PCS).	ASTM E 2490–09.
	G. Ophthalmic	
10–62	Ophthalmics—Ophthalmic Instruments—Tonometers	ANSI Z80.10–2009.
10–63	Ophthalmic implants—Intraocular lenses—Guidance on assessment of the need for clinical investigation of intraocular lens design modifications.	ISO/TR 22979–2006.
	H. Radiology	
12–219	Medical electrical equipment—X-ray tube assemblies for medical diagnosis—Characteristics of focal spots CORRIGENDUM 1.	IEC 60336 (Fourth edition—2005).
12–220	Safety of laser products—Part 1: Equipment classification and requirements CORRIGENDUM 1.	IEC 60825–1 (Second edition—2007).
12–221	Evaluation and routine testing in medical imaging departments—Part 3–4: Acceptance tests—Imaging performance of dental X-ray equipment.	IEC 61223–3–4 First edition 2000–03.
12–222	Evaluation and routine testing in medical imaging departments—Part 3–5: Acceptance tests—Imaging performance of computed tomography X-ray equipment.	IEC 61223–3–5 First edition 2004–08.
12–223	Evaluation and routine testing in medical imaging departments—Part 3–5: Acceptance tests—Imaging performance of computed tomography X-ray equipment CORRIGENDUM 1.	IEC 61223–3–5 (First edition 2004).
12–224	Medical electrical equipment—Part 2–44: Particular requirements for the basic safety and essential performance of X-ray equipment for computed tomography CORRIGENDUM 1.	IEC 60601–2–44 (Third edition—2009).
12–225	Computed Tomography Dose Check	NEMA XR 25 2010.
12–226	Evaluation and routine testing in medical imaging departments—Part 2–6: Constancy tests—Imaging performance of computed tomography X-ray equipment.	IEC 61223–2–6 Second edition 2006–11.
	I. Tissue Engineering	
15–25	ASTM F2312—10 Standard Terminology Relating to Tissue Engineered Medical Products.	ASTM F2312–10.
15–26	ASTM F2211—04 Standard Classification for Tissue Engineered Medical Products (TEMPs).	ASTM F2211–04.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the Agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.* FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to the contact person (*See* **FOR FURTHER INFORMATION CONTACT**). To be properly considered such recommendations should contain, at a minimum, the following information: (1) Title of the standard; (2) any reference number and date; (3) name and address of the national or international standards development organization; (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply; and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of "Guidance on the Recognition and Use of Consensus Standards" by using the Internet. CDRH maintains a site on the

Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing "Modification to the List of Recognized Standards, Recognition List Number: 026" will be available on the CDRH home page. You may access the CDRH home page at *http://www.fda.gov/MedicalDevices.*

You may access "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards" at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards.*

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.*

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (*see* **FOR FURTHER INFORMATION CONTACT**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 026. These modifications to the list or recognized standards are effective upon publication of this notice in the **Federal Register.**

Dated: March 8, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5815 Filed 3–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0135]

Ensuring the Safety of Imported Foods and Animal Feed: Comparability of Food Safety Systems and Import Practices of Foreign Countries; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing regarding new FDA initiatives for ensuring the safety of foods and animal feed imported into the United States. The purpose of the public hearing is to provide stakeholders the opportunity to discuss FDA's use of international comparability assessments as a mechanism to enhance the safety of imported foods and animal feed and lessons learned through equivalence determinations. In addition, there will be a separate discussion of FDA's efforts to gather information from regulators in other countries regarding the regulatory policies, practices, and programs they currently use to ensure the safety of foods and animal feed imported into their countries. In a separate notice published elsewhere in this issue of the **Federal Register**, FDA is announcing a 1-day public meeting to discuss implementation of the imports provisions found in the FDA Food Safety Modernization Act (FSMA).

DATES: *See* "How to Participate in the Hearing" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: *For questions about registration, to register orally, or to submit a notice of participation by mail, fax, or by e-mail:* Courtney Treece, Planning Professionals Ltd., 1210 W. McDermott, suite 111, Allen, TX 75013, 704–258–4983, FAX: 469–854–6992, e-mail: *ctreece@planningprofessionals.com.*

For questions about the hearing, if special accommodations are needed due to a disability, to request onsite parking, or to submit the full text, comprehensive outline, or summary of an oral presentation: Juanita Yates, Center for Food Safety and Applied Nutrition, Food and Drug Administation, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1731, e-mail: *Juanita.Yates@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Government and the food industry are pursuing proactive efforts to reduce the incidence of food borne illness. The President's Food Safety Working Group (FSWG) has recommended that food regulators shift towards prioritizing prevention and move aggressively to implement sensible measures designed to prevent problems before they occur (Ref. 1). The newly enacted FSMA (Pub. L. 111–353) also embodies the principle of prevention by requiring those who produce and import food to have systems of preventive controls in place and empowering FDA to hold them accountable to meet their new responsibilities.

FDA recognizes that to ensure the safety of imported foods and animal feed and fulfill its public health mission in a global age, it must embrace new approaches that take into account the entire supply chain and its complexity. Consistent with FSMA and the recommendation of the President's FSWG, FDA is focusing on preventing problems at appropriate points along the global food supply chain. This public hearing is an opportunity for the Agency to obtain views from interested persons concerning certain key aspects of these food safety initiatives: (1) International comparability assessments and (2) gathering information on the policies, practices, and programs used by foreign regulators to ensure the safety of imported foods and animal feed. The public hearing will be conducted in accordance with part 15 (21 CFR part 15), as described in the following paragraphs. (*See* "Notice of Hearing Under Part 15" in section III of this document.)

FDA's initiatives discussed at the 2-day public hearing align with and help support FSMA implementation. Day One of the hearing will open with a general discussion of FSMA from the perspectives of consumers, industry, legislators, and U.S. trading partners. Day Two will cover policies, practices, and programs used by foreign regulators to ensure the safety of imported foods and animal feed. In a separate notice published elsewhere in this issue of the **Federal Register**, FDA is announcing a 1-day public meeting to discuss implementation of the imports provisions found in title III of FSMA.

II. Topics for Discussion at the Hearing

A. Day One of Hearing: International Comparability Assessments

Under FDA's proposed model, FDA will consider the food safety system of a foreign country to be "comparable" to

the U.S. food safety system if, based on a complete assessment, FDA determines the foreign food safety system is: (1) Similar, though not identical, to the U.S. food safety system, (2) comprises elements that are analogous to those within the U.S. food safety system, and (3) a system for which FDA has determined provides the same level of public health protection as that of the United States. To help set regulatory priorities and improve the efficient use of FDA resources for import safety, FDA has developed a tool it proposes to use in assessing the overall food safety systems of other countries and comparing them to the U.S. food safety system. FDA will post the agenda prior to the hearing at *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/ucm243781.htm.*

At this hearing, FDA will seek public comment on FDA's proposed comparability assessment process. In particular, FDA will be inviting the public to share its views on the following topic areas:

Comparability as a Tool

1. What are the perceived benefits and/or disadvantages to FDA's proposed comparability model?
2. What would be reasonable incentives for a country to participate in a comparability assessment?
3. What are the potential costs to the country undergoing a comparability determination and what would make the investment worthwhile?
4. Is there a more appropriate term for comparability? If so, what is the more appropriate term and why is it more appropriate?
5. How should comparability findings relate to the FSMA import safety provisions in title III (e.g., the importer verification and accredited third party provisions)?

Maintaining Comparability Status

1. For cases where a country's food safety system has been determined to be comparable: How often should FDA review assessments? Are there specific changes to a food safety system or regulatory system that should trigger a visit to the country?
2. Under what circumstances should comparability be revoked, and by what process?
3. What are reasonable expectations for ongoing communication, updating, and affirmation of a comparability determination?

Lessons Learned Through Equivalence

The Agency recognizes that comparability determinations represent a novel construct, albeit there may be corollaries with certain equivalence determinations, such as those made by the United States Department of Agriculture's Food Safety and Inspection Service under its statutory authorities.

To gain insight from earlier work on equivalence and to inform efforts to assess comparability, FDA is requesting that countries share information on their experience with equivalence. FDA seeks information on the following issues:

1. What measures do other countries take to ensure transparency throughout the equivalence determination process?
2. What are the current practices in requesting translation of documents?
3. What are the perceived resource savings associated with finding a country equivalent?
4. Are cost benefit analyses available on equivalence determinations?
5. Have any equivalence determinations been reversed, and, if so, under what circumstances?
6. Are there data that demonstrate that equivalence determinations provide meaningful public health protections?

B. Day One of Hearing: Update on Pilot: Comparability Review of New Zealand

The United States and New Zealand have several Cooperative Arrangements with each other relating to food safety. To facilitate the renewal of existing Arrangements between the United States and New Zealand, the New Zealand Food Safety Authority agreed to participate in a pilot comparability assessment using FDA's proposed model for international comparability assessment. An update on this comparability assessment process will be provided during the public hearing.

C. Day One of Hearing: Update on European Union (EU) Molluscan Bivalve Equivalence Determination With Comparability Component

During bilateral discussions early in 2010, the United States and the EU addressed issues related to possible approaches to equivalence assessments. During these discussions, it was noted that the *Codex Guidelines on the Judgment of Equivalence of Sanitary Measures Associated with Food Inspection and Certification systems (CAC/GL 53/2003)* (Ref. 2) provides guidance on equivalence determinations. It was determined that the comparability framework would allow FDA to apply the Codex concept to its equivalence determinations, by providing an objective basis for documenting the knowledge, experience, and confidence that can be used to underpin further equivalence determinations. Currently, the United States and EU are in the process of conducting equivalence assessments of each other's systems for shellfish. An update on the United States and EU equivalence assessments of each other's systems for shellfish will be provided at the public hearing.

D. Day Two of Hearing: Policies, Practices, and Programs Used by Foreign Regulators To Ensure the Safety of Imported Foods and Animal Feed

FDA is interested in learning more about the policies, practices, and programs (including import and export certification programs) used by foreign regulators to ensure the safety of foods and animal feed imported into their countries and will engage directly with countries over the next several months to learn about their programs. Through these conversations with regulators from other countries, FDA is also interested in learning how countries measure the effectiveness of their import control and export certification activities. The information obtained from these conversations will allow FDA to explore using the innovation and improvements that are being adopted in other countries to improve the safety of imported food and animal feed products. For example, FDA seeks to better understand the control systems used by other countries for importation of ingredients used in processed food as well as the control systems for transshipment of products.

During Day Two of the public hearing, FDA will seek input from countries and international organizations that have undertaken activities to gather information on currently implemented import policies, practices, and programs, and to provide capacity building assistance in support of safe imports.

III. Notice of Hearing Under Part 15

The Commissioner of Food and Drugs (the Commissioner) is announcing that the public hearing will be held in accordance with part 15. The hearing will be conducted by a presiding officer, accompanied by FDA senior management and staff with relevant expertise.

Persons who wish to participate in the hearing (either by making an oral presentation or as a member of the audience) must file a notice of participation. (*See* table 1 and **FOR FURTHER INFORMATION CONTACT** of this document, and "How to Participate in the Hearing" in section IV of this document.) By delegation from the Commissioner (Staff Manual Guide 1410.21, section 1(G)(5)), the Assistant Commissioner for Policy has

determined under § 15.20(c) that advance submissions of oral presentations are necessary for the panel to formulate useful questions to be posed at the hearing under § 15.30(e), and that the submission of a comprehensive outline or summary is an acceptable alternative to the submission of the full text of the oral presentation. FDA requests that individuals and organizations with common interests consolidate their requests for oral presentations and request time for a joint presentation through a single representative. After reviewing the notices of participation and accompanying information, the Agency will schedule each oral presentation and notify each participant of the time allotted to the presenter and the approximate time that the presentation is scheduled to begin. If time permits, interested persons who attend the hearing but did not submit a notice of participation in advance may be permitted to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing. After the hearing, the hearing schedule and a list of participants will be placed on file at the Division of Dockets Management (*see* table 1 of this document) under the docket number listed in brackets in the heading of this notice. To ensure timely handling of any mailed notices of participation, presentations, or comments, any outer envelope should be clearly marked with the docket number listed in brackets in the heading of this notice along with the statement "Ensuring the Safety of Imported Foods and Animal Feed; Comparability of Food Safety Systems; Public Hearing Request for Comments." Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to the Agency's policy and procedures for electronic media coverage of public administrative proceedings in part 10, subpart C (21 CFR part 10, subpart C). Under § 10.205, representatives of the electronic media may be permitted, subject to the procedures and limitations in § 10.206, to videotape, film, or otherwise record Agency public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b).

Any persons requiring special accommodations to attend the hearing due to a disability should direct those needs to the contact person (*see* **FOR FURTHER INFORMATION CONTACT**).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of these provisions as specified in §§ 10.19 and 15.30(h). In particular, § 15.21(a) states that the notice of hearing will provide persons an opportunity to file a written notice of participation with the Division of Dockets Management within a specified period of time. If the public interest requires, e.g., if a hearing is to be conducted within a short period of time, the notice may name a specific FDA employee and telephone number to whom an oral notice of participation may be given. If the public interest requires, the notice may also provide for submitting notices of participation at the time of the hearing. In this document, the conditions for the hearing specify that notices of participation be submitted electronically to an Agency Internet site, to a contact person (outside of FDA) who will accept notices of participation by mail, telephone, fax, or e-mail, or in person on the day of the hearing (as space permits). FDA is using these procedures for submitting notices of participation, rather than providing for the submission of notices of participation to the Division of Dockets Management, because the hearing is to be conducted within a short period of time and these procedures are more efficient. In addition, these procedures provide more flexibility to persons who wish to participate in the hearing than would be provided if participants were required to submit the notice of participation in writing to the Division of Dockets Management. By delegation from the Commissioner (Staff Manual Guide 1410.21, section 1(G)(5)), the Assistant Commissioner for Policy finds under § 10.19 that no participant will be prejudiced, the ends of justice will thereby be served, and the action is in accordance with law if notices of participation are submitted by the procedures listed in this notice rather than to the Division of Dockets Management.

IV. How To Participate in the Hearing

Advance registration by submission of a notice of participation is necessary to ensure participation and will be accepted on a first-come, first-served basis. Notices of participation may be submitted electronically (*see* table 1 of this document); FDA encourages the use of electronic means of advance registration. Notices of participation may also be submitted orally or by mail, fax, or e-mail (*see* **FOR FURTHER INFORMATION CONTACT**). *See* table 1 of this document for the dates by which notices of participation must be submitted. A single copy of any notice of participation is sufficient.

TABLE 1—INFORMATION ON PARTICIPATION IN THE HEARING AND ON SUBMITTING COMMENTS

	Date	Electronic address	Address (non-electronic)	Other information
Date of Hearing	March 30, 2011, 9 a.m. to 5 p.m. March 31, 2011, 9 a.m. to 1 p.m.	.....	Harvey W. Wiley Building, First Floor Auditorium, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. Across the street from the College Park/University of Maryland Metro Station (Green Line).	Registration begins at 8:30 a.m.

TABLE 1—INFORMATION ON PARTICIPATION IN THE HEARING AND ON SUBMITTING COMMENTS—Continued

	Date	Electronic address	Address (non-electronic)	Other information
Advance Registration.	By March 21, 2011.	*http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/ucm243781.htm*.	FDA encourages the use of electronic registration, if possible.[1].	Registration to attend the hearing will also be accepted onsite on the day of the hearing, as space permits. Registration information may be posted without change to *http://www.regulations.gov*, including any personal information provided.
Request special accommodations due to disability.	By March 21, 2011.	.....	Juanita Yates, 301–436–1731, email: *juanita.yates@fda.hhs.gov*.	
Make a request for onsite parking.	By March 23, 2011.	.....	Juanita Yates (see previous row in the fourth column of this table).	
Make a request for oral presentations.	By March 14, 2011.	.....	.....	Requests made on the day of the hearing to make an oral presentation may be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov*, including any personal information.
Provide a brief description of the oral presentation and any written material for the presentation.	By March 23, 2011.	.....	Juanita Yates, 301–436–1731, email: *juanita.yates@fda.hhs.gov*.	Written material associated with an oral presentation may be posted without change to *http://www.regulations.gov*.
Submit written comments.	Submit comments by June 30, 2011.	Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.	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.	All comments must include the Agency name and the docket number found in brackets in the heading of this document. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. FDA encourages the submission of electronic comments by using the Federal eRulemaking Portal. For additional information on submitting comments, see the "Request for Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

[1] Registrations or requests to make an oral presentation may be submitted by mail, fax, e-mail, or telephone by providing registration information (including name, title, business affiliation (if applicable), address, telephone number, fax number (if available), and e-mail address (if available)) (*see* **FOR FURTHER INFORMATION CONTACT**).

The notice of participation must include the participant's name, title, business affiliation (if applicable), address, telephone number, fax number (if available), and e-mail address (if available). If the participant wishes to request an opportunity to make an oral presentation during the open public comment period of the hearing, their notice of participation also must include the title of their presentation, the sponsor of the oral presentation (e.g., the organization paying travel expenses or fees), if any; and the approximate amount of time requested for the presentation. Presentations must be limited to the questions and subject matter identified in this document.

Under § 15.20(c), if an opportunity to make an oral presentation is requested, the presentation must be submitted (either as the full text of the presentation, or as a comprehensive outline or summary). This may be done by e-mail or in writing. See table 1 of this document for the dates by which a presentation must be submitted. *See* table 1 and **FOR FURTHER INFORMATION CONTACT** of this document for information on where to send a presentation.

Individuals who request an opportunity to make an oral presentation will be notified of the scheduled time for their presentation prior to the hearing. Depending on the number of oral presentations, FDA may need to limit the time allotted for each oral presentation (e.g., 5 minutes each). Depending on the content of the presentations, the time allotted for oral presentations may vary. The Agency requests that interested persons and groups having similar interests consolidate their requests for oral presentation and present them through a single representative. If special accommodations are needed due to a disability, please inform the Agency (*see* table 1 and **FOR FURTHER INFORMATION CONTACT** of this document).

FDA will also accept registration onsite; however, space is limited. Onsite registration will be accepted on a first-come, first-served basis and will be closed when the maximum seating capacity is reached. Requests for an opportunity to make a presentation from individuals or organizations that did not register in advance to make an oral

presentation may be granted if time permits.

Persons who registered in advance for the hearing should check in at the onsite registration desk between 8:30 a.m. and 9 a.m. Persons who wish to register onsite on the day of the hearing should do so at the registration desk between 8:30 a.m. and 9 a.m. FDA encourages all participants to attend the entire hearing.

V. Request for Comments

Interested persons may submit to the Division of Dockets Management (*see* table 1 of this document) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

VII. References

The following references are on display at the Division of Dockets Management (*see* Transcripts), between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the following Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register.**)

1. President's Food Safety Working Group findings, *http://www.foodsafetyworkinggroup.gov/ContentKeyFindings/HomeKeyFindings.htm.*

2. Codex Guidelines on the Judgment of Equivalence of Sanitary Measures Associated with Food Inspection and Certification systems (CAC/GL 53/2003): *http://www.codexalimentarius.net/download/standards/10047/CXG_053e.pdf.*

Dated: March 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5943 Filed 3–10–11; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Town Hall Discussion With the Director of the Center for Devices and Radiological Health and Other Senior Center Management

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting entitled "Town Hall Discussion With the Director of the Center for Devices and Radiological Health and Other Senior Center Management." The purpose of this public meeting in the Orlando, FL, area is to engage in a dialogue about issues of importance to FDA's Center for Devices and Radiological Health (CDRH) and to members of the public, including the medical device industry, health care professionals, patients, and consumers.

Date and Time: The public meeting will be held on May 5, 2011, from 8 a.m. to 12 noon EST.

Location: The public meeting will be held at the Sheraton Orlando Downtown Hotel, 400 West Livingston St., Orlando, FL 32801. Attendees requiring sleeping rooms should call 401–843–6664 and request the group rate for the "Food & Drug Administration Town Hall Meeting" room block. The meeting will not be videotaped or Web cast.

Contact: Heather Howell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4320, Silver Spring, MD 20993, 301–796–5718, e-mail: *heather.howell@fda.hhs.gov.*

Registration and Requests for Oral Presentations: If you wish to attend the public meeting, you must register online at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm244462.htm.* Persons without Internet access may call Heather Howell at 301–796–5718 to register for the meeting.

Provide complete contact information for each attendee, including name, title, company or organization, address, email, and telephone and fax number. Registration requests must be received by 5 p.m. EST on Friday, April 22, 2011.

If you wish to make an oral presentation during any of the sessions at the meeting (*see* section II of this document), you must indicate this at the time of registration. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin.

Registration is free and will be on a first-come-first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration the day of the public meeting will be provided on a space-available basis beginning at 7 a.m. EST.

If you need special accommodations due to a disability, please contact Susan Monahan, 301–796–5661 or *susan.monahan@fda.hhs.gov,* at least 7 days in advance of the meeting.

Comments: FDA is holding this public meeting to share information and discuss issues of importance to the public, including the medical device industry, health care professionals, patients, and consumers.

Regardless of attendance at the public meeting, interested persons may submit either electronic or written comments. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

In 2010, CDRH held three Town Hall meetings in Minneapolis, MN, Boston, MA, and Los Angeles, CA, to provide the public with a new venue to discuss issues of interest with the Center. Any member of the public was invited to provide comments to or ask questions of CDRH participants. We received positive feedback on these meetings and

plan to continue this activity in 2011 in three different locations. In March 2011, the meeting will be held in Dallas, TX. After this meeting, CDRH will host one more this year in the San Francisco, CA, area.

II. Public Meeting

The objective of this public meeting is to engage in a dialogue about issues that are of importance to the public.

The public meeting will open with an introduction of CDRH senior staff in attendance. Following introductions, Dr. Jeffrey Shuren, the Director of CDRH, will describe CDRH's strategic priorities for 2011. Members of the public will then be given the opportunity to present comments to CDRH senior staff followed by a question and answer session during which any member of the public may ask questions of the CDRH senior staff on any topic of interest.

In advance of the meeting, additional information, including a meeting agenda with a speakers' schedule, will be made available on the Internet. This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov.* This information will also be available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list).

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: March 4, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5735 Filed 3–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–N–0134, FDA–2011–N–0143, FDA–2011–N–0144, FDA–2011–N–0145, and FDA–2011–N–0146]

FDA Food Safety Modernization Act: Title III—A New Paradigm for Importers; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comment.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "FDA Food Safety Modernization Act: Title III—A New Paradigm for Importers." The purpose of the public meeting is to provide interested persons an opportunity to discuss implementation of the import safety provisions of the recently enacted FDA Food Safety Modernization Act (FSMA). FDA is seeking information on importer verification, the Voluntary Qualified Importer Program, import certifications for food, and third-party accreditation. In a separate notice published elsewhere in this issue of the **Federal Register**, FDA is announcing a public hearing to provide stakeholders the opportunity to discuss FDA's use of international comparability assessments as a mechanism to enhance the safety of imported foods and animal feed and lessons learned through equivalence determinations. The public hearing will include a separate discussion of FDA's efforts to gather information from regulators in other countries regarding the regulatory policies, practices, and programs they currently use to ensure the safety of foods and animal feed imported into their countries.

DATES: *See* "How to Participate in the Meeting" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Patricia M. Kuntze, Office of External Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5322, Silver Spring, MD 20993, 301–796–8641, *Patricia.Kuntze@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FSMA (Pub. L. 111–353) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to establish the foundation for a modernized, prevention-based food safety system that emphasizes accountability for domestic and foreign food and animal feed firms in the supply chain from farm to U.S. table. In particular, title III of FSMA significantly enhances FDA's authority for oversight of the millions of food products that enter the United States each year and, among other things, requires FDA to develop regulations, guidance, and to otherwise implement the following provisions:

Section 301. Foreign Supplier Verification Program (FSVP) requires importers to conduct risk-based foreign supplier verification activities to verify that imported food is not adulterated under section 402 of the FD&C Act (21 U.S.C. 342) or misbranded under section 403(w) of the FD&C Act (21 U.S.C. 343(w)) (relating to allergens) and is produced in compliance with FDA's preventive controls requirements and produce safety standards, where applicable. Facilities in compliance with FDA's seafood, juice, or low-acid canned food products requirements are exempted in whole or in part from the FSVP requirements. The statute directs FDA to exempt, by notice in the **Federal Register**, importers of food imported into the United States in small quantities for research uses or for personal consumption. The statute further directs FDA to issue implementing regulations and guidance on FSVPs.

Section 302. Voluntary qualified importer program (VQIP) requires FDA to establish a voluntary, user-fee funded program to expedite entry into the United States of imported food from eligible, qualified importers. To be eligible to participate in VQIP, an importer must offer food for importation from a facility that has a certification by an accredited third party. FDA will qualify eligible importers to participate in VQIP based on risk considerations. The statute directs FDA to issue guidance on participation in and compliance with VQIP.

Section 303. Authority to require import certifications for food authorizes FDA, based on risk considerations, to require an article of food offered for import into the United States to be accompanied by certifications or other assurances that the food complies with relevant provisions of the FD&C Act. Certifications may be issued by designated foreign governments or accredited third parties.

Section 307. Accreditation of third-party auditors directs FDA to establish a system for the recognition of accreditation bodies that accredit third-party auditors to issue certifications for purposes of the import certification for food and VQIP provisions described previously in this document. Foreign

governments, foreign cooperatives, and any other third parties (including private entities) are eligible to be considered for accreditation as third-party auditors. The statute further provides that if FDA has not, within a specified timeframe, identified and recognized an accreditation body to meet the requirements of this provision, FDA may directly accredit third-party auditors. The statute directs FDA to issue implementing regulations, including provisions on conflicts of interest, financial ties, and unannounced audits, as well as model accreditation standards, including requirements for regulatory audit reports.

In a separate notice published elsewhere in this issue of the **Federal Register**, FDA is announcing a public hearing March 30 and 31, 2011, to provide stakeholders the opportunity to discuss FDA's use of international comparability assessments as a mechanism to enhance the safety of imported foods and animal feed and lessons learned through equivalence determinations. In addition, there will be a separate discussion of FDA's efforts to gather information from regulators in other countries regarding the regulatory policies, practices, and programs they currently use to ensure the safety of foods and animal feed imported into their countries.

II. Purpose and Format of the Meeting

If you wish to attend and/or present at the meeting scheduled for March 29, 2011, please register by e-mail to *http://www.blsmeetings.net/FDAImportSafety* by March 22, 2011. FDA is holding the public meeting on the FSMA imports provisions to receive input from the public to inform the development of the regulations and guidance identified previously in this document. In general, the meeting format will include introductory presentations by FDA. Listening to our stakeholders is the primary purpose of this meeting. In order to meet this goal, FDA will provide multiple opportunities for individuals to actively express their views by making presentations at the meeting, participating in break-out sessions on the provisions discussed at the meeting, and submitting written comments to the docket(s) (*see* table 2 of this document for a list of docket numbers and corresponding sections of FSMA) within 30 days after this meeting. There will be an interactive webcast; *see* section III of this document, "How to Participate in the Meeting."

III. How To Participate in the Meeting

Stakeholders will have an opportunity to provide oral comments. Due to limited space and time, FDA encourages all persons who wish to attend the meeting, including those requesting an opportunity to make an oral presentation during the time allotted for public comment at the meeting, to register in advance and to provide the specific topic or issue to be addressed and the approximate desired length of their presentation. Depending on the number of requests for such oral presentations, there may be a need to limit the time of each oral presentation (*e.g.,* 3 minutes each). If time permits, individuals or organizations that did not register in advance may be granted the opportunity for such an oral presentation. FDA would like to maximize the number of stakeholders who make a presentation at the meeting and will do our best to accommodate all persons who wish to make a presentation or express their views at the meeting. FDA anticipates that there will be several opportunities to speak in break-out sessions and an interactive webcast will also be available for stakeholders who are not onsite. FDA encourages persons and groups who have similar interests to consolidate their information for presentation through a single representative. After reviewing the presentation requests, FDA will notify each participant before the meeting of the amount of time available and the approximate time their presentation is scheduled to begin.

There is no fee to register for the public meeting and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited.

Table 1 of this document provides information on participating in the meeting and on submitting comments to the docket (*see* table 2 of this document for a list of docket numbers and corresponding sections of FSMA).

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND ON SUBMITTING COMMENTS

	Date	Electronic address	Address (non-electronic)	Other information
Date of Public Meeting.	March 29, 2011, 9 a.m. to 5 p.m.	.....	FDA White Oak Campus, The Great Room, Bldg. 31, rm. 1503, 10903 New Hampshire Ave., Silver Spring, MD 20993.	Registration begins at 7:30 a.m.
Webcast	March 29, 2011, 9 a.m. to 5 p.m.	*https://collaboration.fda.gov/foodsafety/*.	.....	• If you have never attended a ConnectPRO meeting: Test your connection: *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm* Get a quick overview: *http://www.adobe.com/go/connectpro_overview*[1] • The webcast will provide closed captioning.
Advance Registration.	By March 22, 2011.	*http://www.blsmeetings.net/FDAImportSafety*.	.....	Registration to attend the meeting will also be accepted onsite on the day of the meeting, as space permits. Registration information may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Request special accommodations due to disability.	By March 22, 2011.	.....	Patricia M. Kuntze, 301–796–8641, email: *Patricia.Kuntze@fda.hhs.gov*.	

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND ON SUBMITTING COMMENTS—Continued

	Date	Electronic address	Address (non-electronic)	Other information
Make a request for oral presentation.	By March 22, 2011.	*http://www.blsmeetings.net/FDAImportSafety.*	.....	Requests made on the day of the meeting to make an oral presentation may be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Provide a brief description of the oral presentation and any written material for the presentation.	By March 22, 2011.	*http://www.blsmeetings.net/FDAImportSafety.*	.....	Written material associated with an oral presentation should be submitted in Microsoft PowerPoint, Microsoft Word, or Adobe Portable Document Format (PDF) and may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Submit electronic or written comments.	Submit comments by April 29, 2011.	Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.	*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.	All comments must include the Agency name and the docket number corresponding with the section of FSMA on which you are commenting (see table 2 of this document for a list of docket numbers and corresponding sections of FSMA). All received comments may be posted without change to *http://www.regulations.gov,* including any personal information provided. FDA encourages the submission of electronic comments by using the Federal eRulemaking Portal. For additional information on submitting comments, *see* the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

[1] Adobe, the Adobe logo, Acrobat and Acrobat Connect are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.

IV. Comments

Regardless of attendance at the public meeting, interested persons may submit to the Division of Dockets Management (*see* table 1 of this document) either electronic or written comments for consideration at or after the meeting in addition to, or in place of, a request for an opportunity to make an oral presentation. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Because multiple docket numbers are associated with this document, please include with your comments the docket number(s) that corresponds with the section of FSMA on which you are commenting (*see* table 2 of this document for a list of docket numbers and corresponding sections of FSMA).

TABLE 2

Section of FSMA	Topic	Docket No.
301	Foreign supplier verification program	FDA–2011–N–0143
302	Voluntary qualified importer program	FDA–2011–N–0144
303	Authority to require import certifications for food	FDA–2011–N–0145
307	Accreditation of third-party auditors	FDA–2011–N–0146

Comments that address more than one docket must be filed with each docket to ensure consideration. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and *http://www.fda.gov/Food/FoodSafety/FSMA/default.htm.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: March 9, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5942 Filed 3–10–11; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 6, 2011, between approximately 9 a.m. and 4 p.m. and on April 7, 2011, between approximately 8:30 a.m. and 3:30 p.m.

Location: Hilton Hotel, Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Donald W. Jehn or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On the morning of April 6, 2011, the committee will meet in open session to hear updates of the research programs in the Laboratory of Bacterial Polysaccharides, Division of Bacterial, Parasitic, and Allergenic Products, Office of Vaccines Research and Review, Center for Biologics Evaluation and Research, FDA. In the afternoon of April 6, 2011, the committee will meet in open session and will be briefed on the use of immunological markers for demonstration of effectiveness of meningococcal serogroups A, C, Y, and W–135 conjugate vaccines administered to children less than 2 years of age. On April 7, 2011, the committee will meet in open session to review and discuss approaches to licensure of meningococcal serogroup B vaccines.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: On April 6, 2011, from approximately 9 a.m to 10:50 a.m. and from approximately 12:30 p.m to 4 p.m., the meeting is open to the public. On April 7, 2011, the entire meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 30, 2011. Oral presentations from the public will be scheduled between approximately 10:20 a.m. and 10:50 a.m. and between approximately 2:30 p.m. and 3 p.m. on April 6, 2011, and between approximately 1:30 p.m. and 2 p.m. on April 7, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 22, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 23, 2011.

Closed Committee Deliberations: On April 6, 2011, between approximately 10:50 a.m. and 11:30 a.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 4, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5727 Filed 3–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), authority vested in the Secretary under Title XX, Section 2008(b) of the Social Security Act (42 U.S.C. 1397g(b)), as added by Section 5507(a) of the Affordable Care Act, as it pertains to the functions assigned to HRSA. This authority may be redelegated.

HRSA will consult with the Assistant Secretary for Planning and Evaluation, as appropriate, in implementing this authority.

This delegation excludes the authority to issue regulations, to establish advisory councils and committees and appoint their members, and to submit reports to Congress, and shall be exercised in accordance with the Department's applicable policies, procedures, and guidelines. In addition, I hereby affirm and ratify any actions taken by the Administrator, HRSA, or other HRSA officials, which involved

the exercise of this authority prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: March 4, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–5808 Filed 3–11–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request—Interactive Diet and Activity Tracking in AARP (iDATA): Biomarker Based Validation Study

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: Interactive Diet and Activity Tracking in AARP (iDATA): Biomarker Based Validation Study.

Type of Information Collection Request: New.

Need and Use of Information Collection: The AARP-based study is one component of a multi-center biomarker validation study project involving two other large cohorts in the United States. The iDATA study involves large cohorts and provides the necessary sample size to evaluate the measurement error structure of the diet and physical activity assessment instruments and the heterogeneity of the measurement error structure across multiple and diverse study populations. The iDATA study will include 1,500 participants from the NIH–AARP Diet and Health Study and current AARP membership. The data collection instruments adhere to The Public Health Service Act, which provides authority to the Risk Factor Monitoring and Methods Branch in the Division of Cancer Control and Population Sciences and the Division of Cancer Epidemiology and Genetics. Both divisions work to reduce cancer in the U.S. population by establishing and supporting programs for the detection, diagnosis, prevention and treatment of cancer; and by collecting, identifying, analyzing and disseminating information on cancer research, diagnosis, prevention and treatment. Dietary and physical activity data will be gathered using the instruments as detailed below. In addition, biospecimen and clinic data will be also gathered.

Frequency of Response: Monthly.

Affected Public: Individuals.

Type of Respondents: U.S. adults (persons aged 50–74).

The annual reporting burden is provided for each study component as shown in the table below. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1 ESTIMATES OF ANNUAL BURDEN HOURS

[Type of respondents for all instruments: Adult participants, 50–74 years of age]

Study component	Instrument	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Screening	Pre-Screening Telephone Interview (Attachment 1)	1,334	1	15/60 (.25)	334
	Clinic Eligibility Screening Interview (Attachment 3)	742	1	10/60 (.167)	124
Clinical Components	NHANES III Anthropometry (Attachment 13)	742	3	10/60 (.167)	371
	Resting Metabolic Rate—Main (Attachment 7)	742	1	30/60 (.50)	371
	Resting Metabolic Rate—Subsample (Attachment 7)	34	1	30/60 (.50)	17
	Fasting Blood Protocol and Form (Attachment 5)	742	2	10/60 (.167)	247
	Fitness test Protocol and Form (Attachment 10)	742	1	15/60 (.25)	186
	Physical Activity Readiness Questionnaires—PAR–Q or PARmed-X (Attachments 11A–11B).	742	1	5/60 (.083)	62
	Doubly Labelled Water—Main (Attachment 6)	742	1	40/60 (.667)	495
	Doubly Labelled Water—Subsample (Attachment 6)	34	1	40/60 (.667)	23
Dietary Questionnaires	Automated Self-Administered 24-hour Dietary Recall (ASA24) (Attachment 32).	742	6	30/60 (.50)	2,227
	4-Day Food Record (Attachment 17)	742	2	60/60 (1.0)	1,485
	Diet History Questionnaire (DHQ*Web-II) (Attachment 33).	742	2	45/60 (.75)	1,114
	7-Day Food Checklist (Attachment 16)	742	2	60/60 (1.0)	1,485
Physical Activity Questionnaires.	Activities Completed over Time in 24 Hours (ACT24) (Attachment 34).	742	6	30/60 (.50)	2,227
	Community Healthy Activities Model Program for Seniors (CHAMPS) (Attachment 19).	742	2	15/60 (.25)	371
	Harvard Lifestyle Validation Study Physical Activity Questionnaire (Attachment 18).	742	2	10/60 (.167)	247
	Sedentary Behaviors Questionnaire (Attachment 21)	742	2	20/60 (.33)	495
	Stanford physical activity Survey (Attachment 22)	742	2	8/60 (.133)	198
	NIH–AARP physical activity questions (Attachment 20).	742	2	10/60 (.167)	247
Home Collections	24 Hour Urine Collection Log (Attachment 14)	742	2	60/60 (1.0)	1,485
	Saliva Protocol and Form (Attachment 15)	742	3	10/60 (.167)	371
	Heart Rate Monitor Log (Attachment 8)	34	1	35/60 (.583)	20
	Physical Activity Monitor Log (Accelerometer/Inclinometer) (Attachment 12).	742	2	35/60 (.583)	866
Total					15,060

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 Heather Bowles, Risk Factor Monitoring and Methods Branch, Division of Cancer Control and Population Sciences, National Cancer Institute, 6130 Executive Blvd MSC 7344, Bethesda, MD 20892–7335 or call non-toll-free number 301–496–7344 or e-mail your request, including your address to: *bowleshr@mail.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: March 8, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–5800 Filed 3–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Process Evaluation of the NIH Roadmap Epigenomics Program

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 Institute of Drug Abuse (NIDA), 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: Process Evaluation of the NIH Roadmap Epigenomics Program.

Type of Information Collection Request: New.

Need and Use of Information Collection: The proposed information collection is essential to the process evaluation of the NIH Roadmap Epigenomics Program. The process evaluation is a requirement of each awardee funded under the NIH Roadmap Epigenomics Program. This participation requirement is stated in the program's Requests for Applications.

This evaluation study, a mixed-methods study which uses secondary source documentation and information from tracking and monitoring systems along with primary data to assess program process and progress, is non-experimental. The assessment is based on secondary source information, with primary source information collection added to augment the reliability and internal validity. The primary data collection uses information categories that genuinely tap added distinctions and opinions that relate to it to build the weight of evidence from first-hand sources and substantiate the initial hypotheses about the program phenomenon and its differences from a typical research portfolio of individual and insular projects.

The synthesized results across primary and secondary data sources will provide critical insights on transformativeness of high-impact, trans-NIH programs and contribute important information about the synergies and collaborations in multi-component scientific research. It will also identify areas for program improvement and lessons learned that might be useful to other research programs of the Agency.

To reduce response bias and to make the survey as accessible as possible to busy principal investigators, the survey will be Web-based.

Frequency of Response: Once.

Affected Public: Principal Investigators of the program at not-for-profit institutions.

Type of Respondents: Principal Investigators.

The annual reporting burden is as follows:

Estimated number of Respondents: 53.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours Per Response: 0.33.

Estimated Total Annual Burden Hours Requested: 17.49.

The annualized cost to respondents is estimated at: $891.99.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Frequency of responses per respondent	Average burden hours per response	Annual burden hours requested
Principal Investigators	53	1	0.33 (20 minutes)	17.49

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) 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) 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on 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 Genevieve deAlmeida-Morris, PhD, M.P.H., Project Officer, Office of Science Policy and Communications, NIH/NIDA, NSC—Neuroscience Center, 5229, 6001

Executive Blvd., Rockville, MD 20852 or call non-toll-free number 301–594–6802 or e-mail your request including your address to: *dealmeig@nida.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: March 8, 2011.

Mary Affeldt,

Executive Officer (OM Director), NIDA.

[FR Doc. 2011–5786 Filed 3–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Martin Delaney Collaboratory: Towards an HIV–1 Cure.

Date: April 4–6, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Jay Bruce Sundstrom, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Room 3119, Bethesda, MD 20892–7616, 301–496–7042, *sundstromj@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5798 Filed 3–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Molecular and Cellular Controls of Placental Metabolism.

Date: April 4, 2011.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–496–1485, *ravindm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5795 Filed 3–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal And Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Program Project Grant Review.

Date: March 24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Helen Lin, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, MSC 4872, Bethesda, MD 20892, 301–594–4952, *linh1@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Small Grants Research Review.

Date: April 7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Eric H. Brown, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, MSC 4872, Bethesda, MD 20892, (301) 594–4955, *browneri@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Rheumatic Disease Center Core Review.

Date: April 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications,

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Michael L. Bloom, MBA, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, MSC 4872, Bethesda, MD 20892, 301–594–4953, *bloomm2@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin

Diseases Special Emphasis Panel; Loan Repayment Program.

Date: April 15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Kan Ma, PhD, Scientific Review Officer, National Institute of Arthritis, Musculoskeletal Scientific Review Branch, One Democracy Plaza Suite 800, Bethesda, MD 20892–4872, 301–451–4838, *mak2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5792 Filed 3–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Deepwater Horizon Disaster Research Consortia: Impacts on Human Health.

Date: April 6–8, 2011.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Hotel, 4700 Emperor Boulevard, Durham, NC 27703.

Contact Person: Leroy Worth, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Educational Grants with an Environmental Health Focus.

Date: April 6, 2011.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call)

Contact Person: Linda K Bass, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5791 Filed 3–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Orphans and HIV/AIDS.

Date: April 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michele C. Hindi-Alexander, PhD, Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–8382, *hindialm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5790 Filed 3–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Human Capital Interventions Across Childhood and Adolescence.

Date: April 5, 2011.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and

Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5788 Filed 3–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; RFA–HD–10–006: Developmental Mechanisms of Human Structural Birth Defects P01 Review.

Date: April 7–8, 2011.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Cathy J. Wedeen, PhD, Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–496–1485, *wedeenc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5797 Filed 3–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2011–0006]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0103; Property Acquisition and Relocation for Open Space

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; extension, without change, of a currently approved information collection; OMB No. 1660–0103; FEMA Form 086–0–31 (previously FEMA Form 81–112), Statement of Voluntary Participation for Acquisition of Property for Purpose of Open Space.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Property Acquisition and Relocation for Open Space process as part of the administration of FEMA's mitigation grant programs.

DATES: Comments must be submitted on or before May 13, 2011.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2011–0006. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2011–0006 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cecelia Rosenberg, Grants Policy Branch Chief, FEMA, Mitigation Directorate, (202) 646–3321 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: Regulations implementing Property Acquisition and Relocation for Open Space are codified at 44 CFR part 80. These regulations govern property acquisitions for the creation of open space under all of FEMA mitigation grant programs authorized under both the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121–5207, and the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.* Acquisition and relocation of property for open space use is one of the most common mitigation activities and is an eligible activity type authorized for Federal grant funds under all of FEMA mitigation grant programs. FEMA mitigation grant programs require all properties acquired with FEMA funds to be deed restricted and maintained as open space in perpetuity. This ensures that no future risks from hazards occur to life or structures on that property, and no future disaster assistance or insurance payments are made as a result of damages to that property. This extension of a currently approved collection of information is necessary to establish uniform requirements for State and local implementation of acquisition activities, and to enforce open space maintenance and monitoring requirements for properties acquired with FEMA mitigation grant funds.

Collection of Information

Title: Property Acquisition and Relocation for Open Space.

Type of Information Collection: Extension, without change, of a

currently approved information collection.

OMB Number: 1660–0103.

Form Titles and Numbers: FEMA Form 086–0–31 (previously FEMA Form 81–112), Statement of Voluntary Participation for Acquisition of Property for Purpose of Open Space.

Abstract: FEMA and State and local recipients of FEMA mitigation grant programs will use the information collected to meet the Property Acquisition requirements to implement acquisition activities under the terms of grant agreements for acquisition and relocation activities. FEMA and State/local grant recipients will also use the information to monitor and enforce the open space requirements for all properties acquired with FEMA mitigation grants.

Affected Public: State, local or Tribal Government; individuals or households.

Estimated Total Annual Burden Hours: 11,273 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals or Households.	Property Owners Voluntary Participation Statements/FEMA Form 086–0–31 (previously FEMA Form 81–112).	56	40	2240	1 hour	2240	$27.38	$61,331.20
State, Local, and Tribal Government.	States Review and Submit Deed Restrictions/No Form.	56	40	2240	4 hours	8960	67.73	606,860.80
State, Local, and Tribal Government.	State Officials Reporting Requirements/No Form.	56	1	56	1.3 (1 hour and 18 minutes).	72.8	67.73	4,930.74
State, Local, and Tribal Government.	Transfer Certification/No Form.	.....	.....	.....	.....	.....	.....	.....
State, Local, and Tribal Government.	Enforcement Notices/No Form.	.....	.....	.....	.....	.....	.....	.....
Total	.....	56	.....	4,356	.....	11,273	.....	673,122.74

Estimated Cost: There are no operation and maintenance, or capital and start-up costs associated with this collection of information.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: March 8, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–5827 Filed 3–11–11; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2011–0007]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0104; Severe Repetitive Loss (SRL) Appeals

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; extension, without change, of a currently approved information collection; OMB No. 1660–0104; FEMA Form—None.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Severe Repetitive Loss (SRL) Program appeals process.

DATES: Comments must be submitted on or before May 13, 2011.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2011–0007. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2011–0007 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cecelia Rosenberg, Grants Policy Branch Chief, FEMA, Mitigation Directorate, (202) 646–3321 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA's regulations implementing the SRL program appeals process, authorized by the Flood Insurance Act of 1968 (42 U.S.C. 4102a) are located at 44 CFR 79.7(d). This information collection outlines the process by which any owner of a severe repetitive loss of property may appeal a FEMA decision that would increase the chargeable insurance premium rate on the property. This process requires the owner to submit a written appeal, including any supporting documentation, to FEMA within 90 days of the notice of the insurance increase. Much of the supporting documentation for SRL applications is covered under a separate collection, OMB No. 1660–0072, Mitigation Grant Programs (e-Grants). Although much of the supporting documentation has already been submitted in the original application for SRL grant funds, the property owner may submit any additional documentation that supports their appeal. Without this required information, FEMA will be unable to implement the appeals process for the SRL program, and will be in violation of the requirements under the Flood Insurance Act of 1968, 42 U.S.C. 4102a.

Collection of Information

Title: Severe Repetitive Loss (SRL) Appeals.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0104.

Form Titles and Numbers: None.

Abstract: The SRL program provides property owners with the ability to appeal an increase in their flood insurance premium rate if they refuse an offer of mitigation under this program. The property owner must submit information to FEMA to support their appeal.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 100 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form number	Number of respondents	Number of responses per respondent	Total No. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals or Households.	Appeals Written Request and Supporting Documentation/No. Form.	10	1	10	10	100	$23.94	$2,394
Total	.....	10	.....	10	.....	100	.....	2,394

Estimated Cost: The estimated annual operations and maintenance costs for SRL appeals is $30,488. There is no annual start-up or capital costs.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: March 8, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–5825 Filed 3–11–11; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1958–DR; Docket ID FEMA–2011–0001]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–1958–DR), dated March 3, 2011, and related determinations.

DATES: *Effective Date:* March 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 3, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Connecticut resulting from a snowstorm during the period of January 11–12, 2011, is of sufficient severity and magnitude to warrant a major

disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Connecticut have been designated as adversely affected by this major disaster:

Fairfield, Hartford, Litchfield, New Haven, New London, and Tolland Counties and the Tribal Lands of the Mashantucket Pequot and the Mohegan Tribal Nations located entirely within New London County for Public Assistance.

Fairfield, Hartford, Litchfield, New London, and Tolland Counties and the Tribal Lands of the Mashantucket Pequot and the Mohegan Tribal Nations located entirely within New London County for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. The assistance for New Haven County will be provided for a period of 72 hours.

All counties within the State of Connecticut are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–5820 Filed 3–11–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1959–DR; Docket ID FEMA–2011–0001]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–1959–DR), dated March 7, 2011, and related determinations.

DATES: *Effective Date:* March 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 7, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts resulting from a severe winter storm and snowstorm during the period of January 11–12, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas and Hazard Mitigation throughout the Commonwealth. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this major disaster:

Berkshire, Essex, Hampshire, Middlesex, Norfolk, and Suffolk Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

Essex, Hampshire, Middlesex, Norfolk, and Suffolk for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. The assistance for Berkshire County will be provided for a period of 72 hours.

All counties in the Commonwealth of Massachusetts are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–5824 Filed 3–11–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1957–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1957–DR), dated February 18, 2011, and related determinations.

DATES: *Effective Date:* March 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 18, 2011.

Bronx and Queens Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–5823 Filed 3–11–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Ship's Store Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0018.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Ship's Stores Declaration (CBP Form 1303). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 2403) on January 13, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 13, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Ship's Stores Declaration.

OMB Number: 1651–0018.

Form Number: CBP Form 1303.

Abstract: CBP Form 1303, Ship's Stores Declaration, is used by the carriers to declare articles to be retained on board the vessel, such as sea stores, ship's stores, controlled narcotic drugs, bunker coal, or bunker oil in a format that can be readily audited and checked by CBP. The form was developed as a single international standard ship's stores declaration form to replace the different forms used by various countries for the entrance and clearance of vessels. CBP Form 1303 collects information about the ship, the ports of arrival and departure, and the articles on the ship. It is pursuant to the provisions of section 432, Tariff Act of 1930 and provided for by 19 CFR 4.7, 4.7a, 4.81, 4.85, & 4.87. This form is accessible at *http://forms.cbp.gov/pdf/CBP_Form_1303.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change)

Affected Public: Businesses.

Estimated Number of Respondents: 8,000.

Estimated Number of Responses per Respondent: 13.

Estimated Number of Total Annual Responses: 104,000.

Estimated Total Annual Burden Hours: 26,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor,

Washington, DC 20229–1177, at 202–325–0265.

Dated: March 8, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–5713 Filed 3–11–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–19]

Notice of Submission of Proposed Information Collection to OMB Economic Opportunities for Low and Very Low Income Persons

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the economic opportunities for lower persons and the use of businesses that employ low-income persons.

DATES: *Comments Due Date:* April 13, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2529–0043) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Economic Opportunities for Low and Very Low Income Persons.

OMB Approval Number: 2529–0043.

Form Numbers: HUD–60002, HUD–60003, HUD–958.

Description of the Need for the Information and its Proposed Use: This information collection will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the economic opportunities for lower persons and the use of businesses that employ low-income persons.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	5,050	1.990		3.985		40,050

Total Estimated Burden Hours: 40,050.

Status: Extension of a currently approved collection

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 8, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–5811 Filed 3–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–22]

Notice of Submission of Proposed Information Collection to OMB Requirement for Contractors to provide Certificates of Insurance for Capital Program Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies must obtain certificates of insurance from contractors and subcontractors before beginning work under either the development of a new low-income public housing project or the modernization of an existing project. The certificates of insurance provide evidence that worker's compensation and general liability, automobile liability insurance are in force before any construction work is started.

DATES: *Comments Due Date:* April 13, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0046) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management

Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Requirement for Contractors to provide Certificates of Insurance for Capital Program Projects.

OMB Approval Number: 2577–0046.

Form Numbers: None.

Description of the Need For the Information and its Proposed Use: Public Housing Agencies must obtain certificates of insurance from contractors and subcontractors before beginning work under either the development of a new low-income public housing project or the modernization of an existing project. The certificates of insurance provide evidence that worker's compensation and general liability, automobile liability insurance are in force before any construction work is started.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,000	4		2		6,000

Total Estimated Burden Hours: 6,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 8, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–5804 Filed 3–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–20]

Notice of Submission of Proposed Information Collection to OMB Compliance Inspection Report/ Mortgagee's Assurance of Completion

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information collected ensures newly built homes financed with FHA mortgage insurance are constructed in accordance with acceptable building standards and that deficiencies found in newly constructed and existing dwellings are corrected.

DATES: *Comments Due Date:* April 13, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0189) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Compliance Inspection Report/Mortgagee's Assurance of Completion.

OMB Approval Number: 2502–0189.

Form Numbers: HUD–92300, HUD 92051.

Description of the Need for the Information and its Proposed Use: Information collected ensures newly built homes financed with FHA mortgage insurance are constructed in accordance with acceptable building standards and that deficiencies found in newly constructed and existing dwellings are corrected.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	37,440	16.641		0.248		154,667

Total Estimated Burden Hours: 154,667.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 8, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–5807 Filed 3–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–21]

Notice of Submission of Proposed Information Collection to OMB Technical Suitability of Products Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is required under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act. Respondents are manufacturers seeking acceptance of their products by HUD.

DATES: *Comments Due Date:* April 13, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0313) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Technical Suitability of Products Program.

OMB Approval Number: 2502–0313.

Form Numbers: HUD–92005.

Description of the Need for the Information and its Proposed Use:

This information is required under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act. Respondents are manufacturers seeking acceptance of their products by HUD.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	50	0.52		78.846		2,050

Total Estimated Burden Hours: 2,050.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 8, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–5805 Filed 3–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[USGS–GX.10.LC00.BM3P2.00]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an existing information collection (1028–0078).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) for the North American Amphibian Monitoring Program (NAAMP). As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on July 31, 2011.

DATES: To ensure that we are able to consider your comments on this IC we must receive them on or before May 13, 2011.

ADDRESSES: Please submit a copy of your comments to Phadrea Ponds, Information Collection Clearance Officer, U.S. Geological Survey, 2150–C Centre Avenue, Fort Collins, CO 80526–8118 (mail); 970–226–9445 (phone); 970–226–9230 (fax); or *pondsp@usgs.gov* (e-mail). Please reference Information Collection 1028–0078 in the subject line.

FOR FURTHER INFORMATION CONTACT: Linda Weir at 301–497–5932 or by mail at U.S. Geological Survey, Patuxent Wildlife Research Center, 12100 Beech Forest Road, Laurel, Maryland 20708–4038.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection pertains to volunteers who contribute their time to conduct frog call surveys at assigned survey routes that are part of the North American Amphibian Monitoring Program. Volunteers use an on-line data entry system to submit their data. This information is used by scientists and federal, state, and local agencies to monitor amphibian populations and detect population trends. Responses are voluntary. Please go to: *http://www.pwrc.usgs.gov/naamp* for more information about the NAAMP.

II. Data

OMB Control Number: 1028–0078.

Title: North American Amphibian Monitoring Program (NAAMP).

Type of Request: Extension of a currently approved collection.

Affected Public: General public; individual households.

Respondent Obligation: Voluntary.

Frequency of Collection: 3 times per year.

Estimated Number of Annual Responses: 1,700.

Annual Burden Hours: 5,100 hours. We estimate an average of 3 hours per response. This includes driving time to and from the survey route locations; listening periods at each sampling station; and data entry.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: The estimated non-hour cost for this collection includes: A thermometer (a one-time cost per respondent) and mileage. The thermometer is needed to record air temperature during the survey. The cost of such thermometers is approximately $15. The total operational costs consist of a mileage estimate in accomplishing a survey, calculated by using the mileage reimbursement rate of $0.50 cents per mile (as used in travel reimbursement for federal employees) times 15 miles (the approximate distance of a calling survey route), for a total of $7.50 per survey.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

USGS Information Collection Clearance Officer: Phadrea Ponds 970–226–9445.

Dated: March 4, 2011.

Ken Williams,

Acting Associate Director for Ecosystems.

[FR Doc. 2011–5754 Filed 3–11–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957400–11–L14200000–BJ0000]

Filing of Plats of Survey, Wyoming and Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on the dates indicated.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management and U.S. Forest Service, and are necessary for the management of resources. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the north boundary and subdivisional lines and the survey of the subdivision of certain sections, Township 31 North, Range 48 West, Sixth Principal Meridian, Nebraska, Group No. 167, was accepted November 4, 2010.

The supplemental plat correcting the measurements between sections 27 and 28, and the areas of the lots, Township 51 North, Range 73 West, Sixth Principal Meridian, Wyoming, Group No. 832, was accepted November 29, 2010.

The plat and field notes representing the dependent resurvey of a portion of the north and west boundaries, and the subdivisional lines, Township 21 North, Range 95 West, Sixth Principal Meridian, Wyoming, Group No. 809, was accepted January 18, 2011.

The plat and field notes representing the retracement of a portion of the Wyoming-Colorado State Boundary, through Range 91 West, and the dependent resurvey of a portion of the subdivisional lines, and the subdivision of Section 17, Township 12 North, Range 91 West, Sixth Principal Meridian, Wyoming, Group No. 810, was accepted January 18, 2011.

The plat and field notes representing the retracement of a portion of the Wyoming-Colorado State Boundary, through Range 90 West, and the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 15, Township 12 North, Range 90 West, Sixth Principal Meridian, Wyoming, Group No. 811, was accepted January 18, 2011.

The plat and field notes representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of sections 13 and 14, Township 32 North, Range 114 West, Sixth Principal Meridian, Wyoming, Group No. 815, was accepted February 24, 2011.

The plat and field notes representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of section 7, Township 28 North, Range 76 West, Sixth Principal Meridian,

Wyoming, Group No. 818, was accepted February 24, 2011.

The plat and field notes representing the dependent resurvey of a portion of the south boundary, portions of the subdivisional lines, subdivision of Section 34, and the metes-and-bounds survey of Lot 2, Section 34, Township 16 North, Range 118 West, Sixth Principal Meridian, Wyoming, Group No. 819, was accepted February 24, 2011.

The plat and field notes representing the corrective dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of sections 24 and 25, Township 49 North, Range 63 West, Sixth Principal Meridian, Wyoming, Group No. 829, was accepted February 24, 2011.

The supplemental plat revising the westerly boundary of parcel G, section 10, surveyed under Group No. 716, to form Parcel H, section 10, Township 1 South, Range 1 West, Wind River Meridian, Wyoming, Group No. 835, was accepted February 24, 2011.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: March 8, 2011.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2011–5769 Filed 3–11–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000–L13100000.PP0000–L.X.SS.052L0000]

Notice of Public Meeting, BLM-Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held April 26–27, 2011, in the National Business Center Aviation Management, Alaska Regional Office, 4405 Lear Court, Anchorage, Alaska 99502. On April 26, the meeting starts at 1 p.m. in the training room. On April 27, the meeting begins in the same location at 9 a.m. and the council will accept public comment from 11 a.m.–noon.

FOR FURTHER INFORMATION CONTACT: Thom Jennings, RAC Coordinator; BLM-Alaska State Office; 222 W. 7th Avenue #13; Anchorage, AK 99513. Telephone 907–271–3546 or 907–271–4418 or e-mail *tjenning@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics planned for discussion include:

- Manager reports
- Wild Lands Policy
- Resource management planning
- Other topics of interest to the RAC

All meetings are open to the public. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited, so be prepared to submit written comments if necessary. 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.

Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM RAC Coordinator listed above.

Dated: March 8, 2011.

Bud C. Cribley,

State Director.

[FR Doc. 2011–5767 Filed 3–11–11; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1088 (Final)]

Polyvinyl Alcohol From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Taiwan of polyvinyl alcohol, provided for under subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).[2]

Background

The Commission instituted this investigation effective September 7, 2004, following receipt of a petition filed with the Commission and Commerce by Celanese Chemicals, Ltd., Dallas, TX. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of polyvinyl alcohol from Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 4, 2010 (75 FR 61175). The hearing was held in Washington, DC, on January 25, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 9, 2011. The views of the Commission are contained in USITC Publication 4218 (March 2011), entitled *Polyvinyl Alcohol from Taiwan: Investigation No. 731–TA–1088 (Final).*

By order of the Commission.

Issued: March 9, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–5840 Filed 3–11–11; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson made negative determinations.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–587]

In the Matter of Certain Connecting Devices ("Quick Clamps") for Use With Modular Compressed Air Conditioning Units, Including Filters, Regulators, and Lubricators ("FRL's") That Are Part of Larger Pneumatic Systems and the FRL Units They Connect; Notice of Commission Decision To Reverse an Initial Determination on Remando the Administrative Law Judge; Termination of the Investigation With a Determination of no Violation of Section 337 Because the Asserted Claims of the Asserted Patent Are Invalid for Obviousness

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the initial determination on remand ("RID") of the presiding administrative law judge ("ALJ") and has terminated the investigation with a finding of no violation of section 337 of the Tariff Act of 1930 because the asserted claims of U.S. Patent No. 5,372,392 ("the '392 patent") are invalid for obviousness.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 13, 2006, based on a complaint filed by Norgren, Inc. ("Norgren") of Littleton, Colorado. 71 FR 66193 (Nov. 13, 2006). An amended complaint was filed on October 25, 2006. A supplement to the complaint was filed on November 1, 2006. The amended complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain devices for modular compressed air conditioning units and the FRL units they connect by reason of infringement of certain claims of the '392 patent. The amended complaint also alleged that a domestic industry exists with regard to the '392 patent under subsection (a)(2) of section 337. The amended complaint named SMC Corp. of Japan; SMC Corporation of America of Indianapolis, Indiana (collectively, "SMC"); AIRTAC of China; and MFD Pneumatics ("MFD") of Chicago, Illinois as the respondents and requested a limited exclusion order and a cease and desist order. On July 13, 2007, the Commission determined not to review an ID terminating the investigation with respect to MFD and AIRTAC on the basis of a consent order stipulation and consent order.

On February 13, 2008, the ALJ issued his final ID finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Specifically, the ALJ found that there had been an importation of SMC's accused products and that none of the accused products infringe the asserted claims of the '392 patent. He also found that the asserted claims are not invalid due to obviousness. He further found that Norgren satisfies the domestic industry requirement with respect to the '392 patent. On February 25, 2008, the ALJ issued a recommended determination on remedy and bonding in the event the Commission reversed his finding of no violation of section 337.

On April 18, 2008, the Commission determined not to review the ID and terminated the investigation based on the finding of no violation of section 337. 73 FR 21157 (Apr. 18, 2008). Norgren appealed to the U.S. Court of Appeals for the Federal Circuit ("the Court").

On May 26, 2009, in an unpublished, non-precedential decision, the Court reversed in part the Commission's claim construction, reversed the Commission's determination of noninfringement based upon the new claim construction, and vacated the Commission's determination of nonobviousness. *Norgren Inc.* v. *Int'l Trade Comm'n,* No. 2008–1415 (Fed. Cir. May 26, 2009), 2009 U.S. App. LEXIS 10984. The Court remanded the investigation with instructions for the Commission to evaluate obviousness in the first instance based upon the Court's construction of the claim term "generally rectangular ported flange."

Following receipt of the Court's September 9, 2009, mandate, the Commission ordered the investigation remanded to the Chief ALJ for designation of a presiding ALJ to conduct proceedings in accordance with the Court's judgment. The Chief Judge reassigned the investigation to the ALJ who presided over the original investigation. The ALJ held an evidentiary hearing on April 21, 2010, at which all parties were represented. The parties also fully briefed the merits.

On August 5, 2010, the ALJ issued the RID in which he determined that the asserted claims are not invalid as obvious. SMC and the Commission investigative attorney ("IA") petitioned for review of the ID. Norgren filed a response in opposition to the petitions. On October 7, 2010, the Commission determined to review the RID on the issue of obviousness. The Commission also requested further briefing. 75 FR 63198 (Oct. 14, 2010). The parties have responded to the notice of review, fully briefing obviousness as well as the issues of remedy, the public interest, and bonding.

Upon its review of the issue of obviousness, and based upon the administrative record in this investigation, including the RID, original ID, exhibits, transcripts, and party arguments, the Commission has determined to reverse the ALJ's finding that the asserted claims of the '392 patent are nonobvious, find no violation of section 337 because the claims are invalid as obvious, and terminate the investigation with a finding of no violation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.45(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.45(c)).

By order of the Commission.

Issued: March 8, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–5841 Filed 3–11–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

United States Parole Commission

Record of Vote of Meeting Closure; (Pub. L. 94–409) (5 U.S.C. 552b)

I, Isaac Fulwood, of the United States Parole Commission, was present at a

meeting of said Commission, which started at approximately 10 a.m., on Thursday, February 17, 2011, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to discuss an original jurisdiction case pursuant to 28 CFR 2.17. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Isaac Fulwood, Cranston J. Mitchell, Patricia Cushwa and J. Patricia Wilson Smoot.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: February 18, 2011.

Isaac Fulwood,

Chairman, U.S. Parole Commission.

[FR Doc. 2011–5590 Filed 3–11–11; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,934]

Pass & Seymour/Legrand a Subsidiary of Legrand North America; Including On-Site Leased Workers From Select Staffing, also Known as Real Time Staffing Services, and Aerotek; Concord, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 27, 2010, applicable to workers of Pass & Seymour/Legrand, a subsidiary of Legrand North America, including on-site leased workers from Select Staffing and Aerotek, Concord, North Carolina. The workers manufacture electrical wiring devices. The notice was published in the **Federal Register** on June 16, 2010 (75 FR 34174).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. The company reports that Select Staffing, an on-site leased firm, is also known as Real Time Staffing Services. Select Staffing employees separated from employment at the Concord, North Carolina location of the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Select Staffing, also known as Real Time Staffing Services.

Accordingly, the Department is amending this certification to properly reflect this mater.

The amended notice applicable to TA–W–73,934 is hereby issued as follows:

All workers of Pass & Seymour/Legrand, a subsidiary of Legrand North America, including on-site leased workers from Select Staffing, also known as Real Time Staffing Services, and Aerotek, Concord, North Carolina, who became totally or partially separated from employment on or after June 14, 2010, through May 27, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 3rd day of March 2011.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2011–5656 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,466, TA–W–74,466K]

Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, Including Leased Workers From QFlex, North America Logistics, and UPS, Headquartered in Palo Alto, CA, Teleworkers Across California and Workers On-Site in Roseville, CA; and Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, Including Leased Workers From QFlex, North America Logistics, and UPS, All Other Teleworkers Across the United States; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 10, 2010, applicable to workers of Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, including leased workers from QFlex, North America Logistics, and UPS, Palo Alto, California. The Department's Notice was published in the **Federal Register** on September 23, 2010 (75 FR 57982). The Notice was amended on November 12, 2010 and February 10, 2011 to include teleworkers across many states. The Department's Notices of amended certification were published in the **Federal Register** November 23, 2010 (75 FR 71457–71458) and February 24, 2011 (76 FR 10394–10395).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged employment related to the supply of design services and sales compensation operations for Hewlett Packard Company.

New findings show that worker separations occurred during the relevant time period involving employees of Hewlett Packard, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, working off-site across the United States. These workers meet the criteria under Section 222(a) of the Act.

Based on these findings, the Department is amending this certification to include workers of the Palo Alto, California facility of the subject firm working off-site across the United States.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by Hewlett Packard's decision to shift the supply of like or directly competitive services to foreign countries.

The amended notice, applicable to TA–W–74,466, is hereby issued as follows:

All workers of Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, including leased workers from QFlex, North America Logistics, and UPS, Palo Alto, California, including teleworkers across California and workers on-site in Roseville, California (TA–W–74,466); teleworkers across Arizona (TA–W–74,466A); teleworkers across Florida (TA–W–74,466B); teleworkers across Massachusetts and workers on-site in Andover, Massachusetts (TA–W–74,466C); workers on-site in Minnetonka, Minnesota (TA–W–74,466D); teleworkers across New Hampshire (TA–W–74,466E); teleworkers across New York (TA–W–74,466F); workers on-site in Charlotte, North Carolina (TA–W–74,466G); teleworkers across Ohio (TA–W–74,466H); teleworkers across Texas and workers on-site in Houston, Texas (TA–W–74,466I); and teleworkers across Maine (TA–W–74,466J); and all other teleworkers across the United States (TA–W–74,466K), who

became totally or partially separated from employment on or after June 22, 2009, through September 10, 2012, and all workers in the group threatened with total or partial separation from employment on June 22, 2009, through September 10, 2012, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 2nd day of March 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5658 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,751]

Eaton Corporation, Clutch Division, Auburn, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 14, 2011, applicable to workers of Eaton Corporation, Clutch Division, Auburn, Indiana. The notice will be published soon in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of truck clutches.

The review shows that on October 17, 2008, an amended certification of eligibility to apply for adjustment assistance was issued for all workers of Eaton Corporation, Clutch Division, Auburn, Indiana, separated from employment on or after December 19, 2008 through September 25, 2010. The notice was published in the **Federal Register** on November 3, 2008 (73 FR 65405–65406).

In order to avoid an overlap in worker group coverage, the Department is amending the October 6, 2009 impact date established for TA–W–74,751, to read September 26, 2010.

The amended notice applicable to TA–W–75,147 is hereby issued as follows:

All workers of Eaton Corporation, Clutch Division, Auburn, Indiana, who became totally or partially separated from employment on or after September 26, 2010, through February 14, 2013, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 23rd day of February, 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5660 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,652]

Cooper Tools, Currently Known as Apex Tool Group, LLC, Hicksville, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 27, 2010, applicable to workers of Cooper Tools, Hicksville, Ohio. The workers are engaged in activities related to the production. The notice was published in the **Federal Register** on May 28, 2010 (75 FR 30069).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that in July, 2010, Apex Tool Group, LLC. purchased Cooper Tools and is currently known as Apex Tool Group, LLC. Some workers separated from employment at Cooper Tools had their wages reported under a separate unemployment insurance (UI) tax accounts for Cooper Tools, currently known as Apex Tool Group, LLC.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of air tools, torque wrenches and screwdrivers.

The amended notice applicable to TA–W–71,652 is hereby issued as follows:

All workers of Cooper Tools, currently known as Apex Tool Group, LLC, Hicksville, Ohio, who became totally or partially separated from employment on or after July 13, 2008 through April 27, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 3rd day of March 2011.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2011–5653 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,883]

Celestica, Including On-Site Leased Workers From Adecco, Aerotek, Purchasing Professionals, Synico Staffing, Inc., and Ultimate Staffing, Arden Hills, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 3, 2009, applicable to workers of Celestica, including on-site leased workers from Adecco, Aerotek and Purchasing Professionals. The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9282).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produced printed circuit boards.

New information shows that workers leased from Synico Staffing, Inc. and Ultimate Staffing were employed on-site at the Arden Hills, Minnesota location of Celestica. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Synico Staffing, Inc. and Ultimate Staffing working on-site at the Arden Hills, Minnesota location of Celestica.

The amended notice applicable to TA–W–64,883 is hereby issued as follows:

All workers of Celestica including on-site leased workers from Adecco, Aerotek, Purchasing Professionals, Synico Staffing, Inc., and Ultimate Staffing, Arden Hills,

Minnesota, who became totally or partially separated from employment on or after January 13, 2008, through February 3, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of March 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5650 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,575]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Visteon Corporation; Visteon Headquarters; Including Headquarter Employees At Plymouth, Michican Site and On-Site Workers From Automotive Components Holdings, LLC (ACH), a Subsidiary of Ford Motor Company, and Including On-Site Leased Workers from MSX International, Manpower, Acro Service Corp., Adecco, Inc., Aerotek, Inc., CDI Corporation, Emergent Systems Corp., Engenius, Inc., G–Tech Professional Staffing, Inc., Innovision Technologies, Inc., Meda Technical Services, Inc., Midwest Labor Services, Inc., Talascent (Formerly Known as Modern Professional Services, Rapid Global Business Solutions, Inc., Tempstaff, Inc., the Epitec Group, Trialon Corp., Webrunners, Inc., d/b/a W3R, Syntel, Inc., Computer Horizons Corp., Simmetrix, Inc., Mika Systems, Inc., Integrated Management Systems, Inc.(IMSI), Logica (Bought Out by Teledata Precision Design, Inc.), Sigma Technologies, Inc., Halo Group, LLC, Black Diamond Software, Ciber, Inc., Engineering Technology Associates, Inc., TAC Transportation, the Bartech Group, Manower Temporary Services and Kelly Services Van Buren Township, Michigan

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 28, 2009, applicable to workers of Visteon Corporation, Visteon Headquarters, including Headquarter employees at Plymouth, Michigan site and on-site leased workers from MSX International and Manpower, Van Buren Township, Michigan. The workers are engaged in the manufacturing of automotive systems.

The Visteon Headquarter sites provide support services including research, engineering, manufacturing support, and administrative services such as purchasing, material planning and logistics, legal, human resources, finance, information technology and sales to their affiliated production sites. The notice was published in the **Federal Register** September 22, 2009 (74 FR 48303). The certification was amended on October 13, 2009 to include the above mention on-site leased firms. The amended notice was published in the **Federal Register** on October 27, 2009 (74 FR 55260).

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

The company reports that on-site workers from Automotive Components Holdings, LLC (ACH), a subsidiary of Ford Motor Company, were employed on-site at the Van Buren Township, Michigan site and at the Plymouth, Michigan site. The Department has determined that these workers were sufficiently under the control of the subject firm to be included in this certification.

Based on these findings, the Department is amending this certification to include workers from ACH, a subsidiary of Ford Motor Company working on-site at the Van Buren Township, Michigan site of Visteon Corporation, Visteon Headquarters, including Headquarter Employees at the Plymouth, Michigan site.

The amended notice applicable to TA–W–70,575 is hereby issued as follows:

All workers of Visteon Corporation, Visteon Headquarters, including Headquarter employees at the Plymouth, Michigan site and on-site leased workers from Automotive Components Holdings, LLC (ACH), a subsidiary of Ford Motor Company, MSX International, Manpower, Acro service Corp., Adecco, Inc., Aerotek, Inc., CDI Corp., Emergent Systems Corp., EnGenius, Inc., G–Tech Professional Staffing, Inc., Innovision Technologies, Inc., MEDA Technical Services, Inc., Midwest Labor Services, Inc., Talascend (formerly know as Modern Professional Services, Inc.), Rapid global Business Solutions, Inc., TempStaff, Inc., The Epitec Group, Trialon Corp., Webrunners, Inc., d/b/a W3R, Synetel, Inc., Computer Horizons Corp., Simmetrix, Inc., Mika Systems, Inc., Integrated Management Systems, Inc. (IMSI), Logica (bought out by Teledata Precision Design, Inc.), Sigma Technologies, Inc., Halo Group, LLC, Black Diamond Software, Ciber, Inc., Engineering Technology Associates, Inc., TAC Transportation, The Bartech Group, Manpower Temporary Services and Kelly Services, Inc., Van Buren Township, Michigan, who became totally or partially separated from employment on or after May 18, 2008, through July 28, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 4 day of March, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5651 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,147]

Elkay Manufacturing, Broadview, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 16, 2011, applicable to workers of Elkay Manufacturing, Broadview, Illinois. The notice will be published soon in the **Federal Register.**

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of stainless steel sinks, counters, and cabinets.

The review shows that on December 29, 2008, a certification of eligibility to apply for adjustment assistance was issued for all workers of Elkay Manufacturing Company, Broadview, Illinois, separated from employment on or after December 8, 2007 through December 29, 2010. The notice was published in the **Federal Register** on January 26, 2009 (74 FR 4463).

In order to avoid an overlap in worker group coverage, the Department is amending the January 28, 2010 impact date established for TA–W–75,147, to read December 30, 2010.

The amended notice applicable to TA–W–75,147 is hereby issued as follows:

All workers of Elkay Manufacturing, Broadview, Illinois, who became totally or partially separated from employment on or after December 30, 2010, through February 16, 2013, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for

adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 23rd day of February 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5649 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,694]

Arcelor Mittal, Formerly Known as Mittal Steel Walker Wire, a Subsidiary of Arcelor Mittal—Montreal, Including On-Site Leased Workers From Leasing Systems, Ferndale, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 29, 2010, applicable to workers of Arcelor Mittal, formerly known as Mittal Steel Walker Wire, a subsidiary of Arcelor Mittal—Montreal, including on-site leased workers from Leasing Systems, Inc., Ferndale, Michigan. The workers are engaged in activities related to the warehousing and distribution of processed steel coil, bars, rods and wire. The notice was published in the **Federal Register** on May 28, 2010 (75 FR 30070).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm.

The review shows that on August 9, 2007, a certification of eligibility to apply for adjustment assistance was issued for all workers of Mittal Steel Walker Wire, Inc., Ferndale, Michigan, separated from employment on or after July 23, 2006 through August 9, 2009. The notice was published in the **Federal Register** on January 26, 2009 (74 FR 4463).

In order to avoid an overlap in worker group coverage, the Department is amending the July 15, 2008 impact date established for TA–W–71,694, to read August 10, 2009.

The amended notice applicable to TA–W–71,696 is hereby issued as follows:

All workers of Arcelor Mittal, formerly known as Mittal Steel Walker Wire, a subsidiary of Arcelor Mittal—Montreal, including on-site leased workers from Leasing Systems, Inc., Ferndale, Michigan, who became totally or partially separated from employment on or after August 10, 2009, through April 29, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 24th day of February 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5648 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,859]

The Mega Life & Health Ins. Co., a Subsidiary of Healthmarkets, Inc., Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through Insphere Insurance Solutions, Inc., Including On-Site Leased Workers From Computer Solutions and Software International, Inc., Dell Service Sales, Emdeon Business Services, KFORCE, Microsoft, Pariveda Solutions, Inc., Perot Systems, Corp., Premius Credit Corp., Socrates, Inc., Sogeti USA, LLC, the Z Group, Inc., Verizon, and Viant Payments Systems, North Richland Hills, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 3, 2010, applicable to workers of The MEGA Life & Health Ins., Co., a subsidiary of HealthMarkets, Inc., including on-site leased workers from Computer Solutions and Software International, Inc., Dell Service Sales, Emdeon Business Services, KFORCE, Microsoft, Pariveda Solutions, Inc., Perot Systems Corp., Premium Credit Corp., Socrates, Inc., Sogeti USA, LLC, The Z Group, Inc., Verizon, and Viant Payments Systems, North Richland, Texas. The notice was published in the **Federal Register** on December 13, 2010 (75 FR 77668).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers provide insurance claims processing.

Information shows that some workers separated from employment at the North Richland Hills, Texas location of The MEGA Life & Health Ins. Co., a subsidiary of HealthMarkets, Inc. had their wages reported under a separated unemployment insurance (UI) tax account under the name Insphere Insurance Solutions, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department’s certification is to include all workers of the subject firm who were adversely affected by the acquisition of services from a foreign country.

The amended notice applicable to TA–W–74,859 is hereby issued as follows:

All workers of MEGA Life & Health Ins., Co., a subsidiary of HealthMarkets, Inc., including workers whose unemployment insurance (UI) wages are paid through Insphere Insurance Solutions, Inc., including on-site leased workers from Computer Solutions and Software International, Inc., Dell Service Sales, Emdeon Business Services, KFORCE, Microsoft, Pariveda Solutions, Inc., Perot Systems Corp., Premium Credit Corp., Socrates, Inc., Sogeti USA, LLC, The Z Group, Inc., Verizon, and Viant Payments Systems, North Richland Hills, Texas, who became totally or partially separated from employment on or after November 1, 2009 through December 3, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 2nd day of March, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5661 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,605]

Cambridge Tool & Die, Including On-Site Leased Workers From Action Total Staffing, Cambridge, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment

Assistance on January 13, 2011, applicable to workers of Cambridge Tool & Die, Cambridge, Ohio. The workers are engaged in the production of plastic injection molds. The notice was published in the **Federal Register** on January 26, 2011 (76 FR 4731).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Action Total Staffing were employed on-site at the Cambridge, Ohio location of Cambridge Tool & Die Corporation. The Department has determined that these workers were sufficiently under the control of Cambridge Tool & Die Corporation to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Action Total Staffing working on-site at the Cambridge, Ohio location of Cambridge Tool & Die Corporation.

The amended notice applicable to TA–W–74,605 is hereby issued as follows:

All workers of Cambridge Tool & Die, including on-site leased workers from Action Total Staffing, Cambridge, Ohio, who became totally or partially separated from employment on or after September 7, 2009, through January 13, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 2nd day of March, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5659 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,326]

Pitney Bowes, Inc., Mailing Solutions Management, Global Engineering Group, Including On-Site Leased Workers From Guidant Group, and Teleworkers Located Throughout the United States Reporting to Shelton, CT; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 10, 2010, applicable to workers and former workers of Pitney Bowes, Inc., Mailing Solutions Management Division, Engineering Quality Assurance, Shelton, Connecticut. The Department's Notice was published in the **Federal Register** on September 23, 2010 (75 FR 57981). The certification was amended on January 3, 2011 to include teleworkers located through the United States. The Department's Notice of amended certification was published in the **Federal Register** on January 14, 2011 (76 FR 2710).

At the request of a company official, the Department reviewed the certification to clarify the subject worker group's identity.

Additional information revealed that the correct identity of the subject firm worker group should read: Pitney Bowes, Inc., Mailing Solutions Management, Global Engineering Group, including on-side leased workers from Guidant Group and teleworkers located through the United States reporting to, Shelton, Connecticut.

Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–74,326 is hereby issued as follows:

All workers of Pitney Bowes, Inc., Mailing Solutions Management, Global Engineering Group, including on-site leased workers from Guidant Group and teleworkers located throughout the United States reporting to, Shelton, Connecticut, who became totally or partially separated from employment on or after June 23, 2009, through September 10, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 22nd day of February 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5657 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,582]

General Motors Corporation; Powertrain Flint North; Including On-Site Leased Workers From Allegis Group Services, Securitas, Knight Management and URS Corporation, Flint, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 9, 2010, applicable to workers of General Motors Corporation, Powertrain Flint North, including on-site leased workers from Allegis Group Service, Flint, Michigan. The Notice was published in the **Federal Register** on July 26, 2010 (75 FR 43558). The Notice was amended on November 18, 2010 to include on-site leased workers from Securitas and Knight Management. The amended Notice was published in the **Federal Register** on December 7, 2010 (75 FR 76038–76039)

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of component parts (transmission and engine components and deck and door locks).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

The company reports that workers leased from URS Corporation were employed on-site at the Flint, Michigan location of General Motors Corporation, Powertrain Flint North. The Department has determined that these workers were sufficiently under the control of General Motors Corporation, Powertrain Flint North to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from URS Corporation working on-site at the Flint, Michigan location of General Motors Corporation, Powertrain Flint North.

The amended notice applicable to TA–W–72,582 is hereby issued as follows:

All workers of General Motors Corporation, Powertrain Flint North, including on-site leased workers from Allegis Group Services, Securitas, Knight Management, and URS Corporation, Flint, Michigan, who became totally or partially separated from employment on or after October 2, 2008,

through July 9, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 3rd day of March 2011.

Elliott S. Kushner

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5655 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,375, TA–W–72,375A]

Commercial Furniture Group, Inc., Formerly Known as Falcon Products, Inc., Shelby Williams, Howe and Thonet, Including On-Site Leased Workers From Staffing Solutions, Morristown, TN, and Commercial Furniture Group, Inc., Formerly Known as Falcon Products, Inc., Shelby Williams, Howe and Thonet, Chicago, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on May 5, 2010, applicable to workers of Commercial Furniture Group, Inc., including on-site leased workers from Staffing Solutions, Morristown, Tennessee. The workers are engaged in employment related to the production of commercial wooded furniture. The notice was published in the **Federal Register** on May 28, 2010 (75 FR 30070). The notice was amended on February 17, 2011 to include another location of the subject firm. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information shows that Commercial Furniture Group, Inc. is formerly known as Falcon Products, Inc., Shelby Williams, Howe and Thonet. New information shows that some workers separated from employment at Commercial Furniture Group, Inc., had their wages reported through separate unemployment (UI) tax accounts under the names Falcon Products, Inc., Shelby Williams, Howe and Thonet.

Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–72,375 is hereby issued as follows:

All workers of Commercial Furniture Group, Inc., formerly known as Falcon Products, Inc., Shelby Williams, Howe and Thonet, including on-site leased workers from Staffing Solutions, Morristown, Tennessee (TA–W–72,375) and Commercial Furniture Group, Inc., formerly known as Falcon Products, Inc., Shelby Williams, Howe and Thonet, Chicago, Illinois (TA–W–72,375A), who became totally or partially separated from employment on or after September 21, 2008, through May 5, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 3rd day of March 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5654 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,784]

Chrysler Group LLC; Formerly Known as Chrysler LLC; Kenosha Engine Plant; Including On-Site Leased Workers From Caravan Knight Facilities Management LLC, Syncreon, Mahar Tool Supply Company, Waste Management, Quaker Chemical Corporation, K+S Services, Inc., G4S Secure Solutions, Crassociates, Inc., CES, INC., Evans Distribution Systems, Prodriver Leasing Systems, Inc., Teksystems, Inc., Arcadis and the PIC Group, Kenosha, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 13, 2010, applicable to workers of Chrysler Group, LLC, formerly known as Chrysler, LLC, Kenosha Engine Plant, Kenosha, Wisconsin (subject firm). The Department's notice of determination was published in the **Federal Register** on November 5, 2009 (74 FR 57340).

The certification applicable to workers of the subject firm was amended on May 10, 2010, August 13, 2010, and November 18, 2010 to include the above mentioned on-site leased worker firms. The Department's notices of amended certification were published in the February Register on June 16, 2010 (75 FR 34170), August 30, 2010 (75 FR 52982), and December 7, 2010, respectively.

The workers at the subject firm were engaged in employment related to the production of V–6 automobile engines.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

The company reports that workers leased from the PIC Group were employed on-site at the Kenosha, Wisconsin location of Chrysler Group, LLC, formerly known as Chrysler, LLC, Kenosha Engine Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from The PIC Group working on-site at the Kenosha, Wisconsin location of Chrysler Group, LLC, formerly known as Chrysler, LLC, Kenosha Engine Plant.

The amended notice applicable to TA–W–70,784 is hereby issued as follows:

All workers of Chrysler Group, LLC, formerly known as Chrysler, LLC, Kenosha Engine Plant, including on-site leased workers of Caravan Knight Facilities Management LLC, Syncreon, Mahar Tool Supply Company, Waste Management, Quaker Chemical Corporation, K+S Services, Inc., G4S Secure Solutions, CRAssociates, Inc., CES, Inc., Evans Distribution Systems, ProDriver Leasing Systems, Inc., Teksystems, Inc., Arcadis, and The PIC Group, Kenosha, Wisconsin, who became totally or partially separated from employment on or after May 27, 2008, through September 2, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 2nd day of March 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5652 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,644]

Cinram Manufacturing, LLC, a Subsidiary of Cinram International, Including On-Site Leased Workers From Onesource Staffing Solutions and Canteen, Division of Compass Group, Olyphant, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 16, 2010, applicable to workers of Cinram Manufacturing, LLC, a subsidiary of Cinram International, including on-site leased workers from OneSource Staffing Solutions, Olyphant, Pennsylvania. The workers are engaged in employment related to the production of optical media devices (DVDs, CDs, and Blu-ray discs)produce decorative metal products for appliances. The notice was published in the **Federal Register** on August 2, 2010 (75 FR 45162).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Canteen, a division of Compass Group were employed on-site at the Olyphant, Pennsylvania location of Cinram Manufacturing, LLC. The Department has determined that these workers were sufficiently under the control of Cinram Manufacturing, LLC to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Canteen, a division of Compass Group working on-site at the Olyphant, Pennsylvania location of Cinram Manufacturing, LLC.

The amended notice applicable to TA–W–73,644 is hereby issued as follows:

All workers of Cinram Manufacturing, LLC, a subsidiary of Cinram International, including on-site leased workers from OneSource Staffing Solutions and Canteen, a division of Compass Group, Olyphant, Pennsylvania, who became totally or partially separated from employment on or after March 4, 2009, through July 16, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 24th day of February 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–5647 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0027]

Respiratory Protection Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified by the Respiratory Protection Standard (29 CFR 1910.134).

DATES: Comments must be submitted (postmarked, sent, or received) by May 13, 2011.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2011–0027, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2011–0027). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Respiratory Protection Standard (29 CFR 1910.134; hereafter, "the

Standard") contains information collection requirements that require employers to: Develop a written respirator program; conduct worker medical evaluations and provide follow-up medical evaluations to determine the worker's ability to use a respirator; provide the physician or other licensed healthcare professional with information about the worker's respirator and the conditions under which the worker will use the respirator; and administer fit tests for workers who will use negative- or positive-pressure, tight-fitting facepieces. In addition, employers must ensure that workers store emergency-use respirators in compartments clearly marked as containing emergency-use respirators. For respirators maintained for emergency use, employers must label or tag the respirator with a certificate stating the date of the inspection, the name of the individual who made the inspection, the findings of the inspection, required remedial action, and the identity of the respirator.

The Standard also requires employers to ensure that cylinders used to supply breathing air to respirators have a certificate of analysis from the supplier stating that the breathing air meets the requirements for Type 1—Grade D breathing air; such certification assures employers that the purchased breathing air is safe. Compressors used to supply breathing air to respirators must have a tag containing the most recent change date and the signature of the individual authorized by the employer to perform the change. Employers must maintain this tag at the compressor. These tags provide assurance that the compressors are functioning properly.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Respiratory Protection Standard (29 CFR 1910.134). The Agency is requesting an increase in burden hours from 7,159,601 to 7,422,346 (a total increase of 262,745 hours). The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Respiratory Protection Standard (29 CFR 1910.134).

OMB Number: 1218–0099.

Affected Public: Business or other for-profits; Not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 618,804.

Frequency of Response: Annually; monthly; on occasion.

Total Responses: 23,579,085.

Average Time per Response: Varies from 5 minutes (.08 hour) to mark a storage compartment or protective cover to 8 hours for large employers to gather and prepare information to develop a written plan.

Estimated Total Burden Hours: 7,422,346.

Estimated Cost (Operation and Maintenance): $204,136,769.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0027). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on March 9, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–5668 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: *Report of Changes that May Affect Your Black Lung Benefits (CM–929 and CM–929P).* A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 13, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1447, Email *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 936, 30 U.S.C. 941 and 20 CFR 725.533(e) authorizes the Division of Coal Mine Workers' Compensation (DCMWC) to pay compensation to coal miner beneficiaries. Once a miner or survivor is found eligible for benefits, the primary beneficiary is requested to report certain changes that may affect benefits. To ensure that there is a review and update of all claims paid from the Black Lung Disability Trust Fund, and from Social Security cases transferred to the Department of Labor under the Black Lung Consolidation of Administrative Responsibilities Act of 2002, and to help the beneficiary comply with the need to report certain changes, the CM–929 is sent to all appropriate primary beneficiaries. The CM–929 is printed by the DCMWC computer system with information specific to each beneficiary, such as name, address, number of dependents on record, state workers' compensation information, and amount of current benefits. The beneficiary reviews the information and certifies that the information is current, or provides updated information. The form includes a warning about potential consequences of failure to report changes. DCMWC uses Information Collection OMB 1240–0020, Forms CM–623 and CM–623S, to monitor a representative payee's use of funds paid on a beneficiary's behalf. This is an annual reporting requirement and, while the information collected on OMB 1240–0028 and 1240–0020 is different, the same payees complete both forms and the same DCMWC claims examiner reviews them. Therefore, DCMWC incorporated the CM–929 into the CM–623 and CM–623S in those cases that appropriately had been sent both forms. This composite form is entitled CM–929P, and allows respondents to verify information to DCMWC once annually instead of twice, as is now required. This information collection is currently approved for use through June 30, 2011.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to verify the accuracy of information in the beneficiary's claims file, to identify changes in the beneficiary's status, and to ensure that the amount of compensation being paid the beneficiary is accurate.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Report of Changes That May Affect Your Black Lung Benefits.

OMB Number: 1240–0028.

Agency Number: CM–929 and CM–929P.

Affected Public: Individuals and not-for-profit institutions.

Form	Time to complete	Frequency of response	Number of respondents	Number of responses	Hours burden
CM–929	5–8 min	Annually	55,000	55,000	4,858
CM–929P	6–80 min	Annually	7,150	7,150	7,769
Totals	13 min		62,150	62,150	12,627

Total Respondents: 62,150.

Total Annual Responses: 62,150.

Average Time per Response: 13 minutes.

Estimated Total Burden Hours: 12,627.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $439,212.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 7, 2011.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2011–5826 Filed 3–11–11; 8:45 am]

BILLING CODE 4510–CK–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 9 a.m., April 11, 2011.

PLACE: On board MISSISSIPPI V at Port of Hickman, Hickman, KY.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs

and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 12, 2011.

PLACE: On board MISSISSIPPI V at Mud Island, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 13, 2011.

PLACE: On board MISSISSIPPI V at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 15, 2011.

PLACE: On board MISSISSIPPI V at Lower Julia Street Wharf Area, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District, and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

George T. Shepard,

Colonel, EN, Secretary, Mississippi River Commission.

[FR Doc. 2011–5956 Filed 3–10–11; 4:15 pm]

BILLING CODE 3720–58–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974, as Amended; System of Records Notices

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of the establishment of new privacy system of record, NARA 41.

SUMMARY: The National Archives and Records Administration (NARA) proposes to add a system of records to its existing inventory of systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552(a)) ("Privacy Act"). In this notice, NARA publishes NARA 41, the Use of Space in Presidential Libraries and Grounds Case Files.

DATES: This new system of records, NARA 41, will become effective April 13, 2011 without further notice unless comments are received that result in further revision. NARA will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before the date above.

ADDRESSES: You may submit comments, identified by SORN number NARA 41, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 301–837–0293.
- *Mail:* Kimberly Keravuori, Office of Policy and Planning (NPOL), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Martin McGann, Office of Presidential Libraries (NL), Room 2200, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* (301) 837–1962. *Fax:* 301–837–3199.

SUPPLEMENTARY INFORMATION: Section 2112 of title 44 of the United States Code permits the Archivist of the United States to maintain, operate, and protect land, facilities and equipment as Presidential archival depositories within the national archives system and to make such land, facilities and equipment available for occasional, non-official uses.

The notice for this system of records states the name and the location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in the records, and the proposed "routine uses" of the system of records. The notice also includes the business address of the NARA official who will inform interested persons of the procedures whereby they may gain access to, and correct, records pertaining to themselves.

One of the purposes of the Privacy Act, as stated in section 2(b)(4) of the Act, is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information. NARA intends to follow these principles in transferring information to another agency or individual as a "routine use" including assurance that the information is relevant for the purposes for which it is transferred.

Dated: March 10, 2011.

David S. Ferriero,

Archivist of the United States.

NARA Privacy Act Systems: NARA 41

SYSTEM NAME:

The Use of Space in Presidential Libraries and Grounds Case Files.

SYSTEM LOCATION:

The Case Files are maintained at the Presidential Library that received the request for use. Presidential Library addresses are located at *http://www.archives.gov/locations/.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who request permission to use Presidential Libraries and Grounds and persons sponsoring, promoting, conducting or having supervision over activities associated with such requested uses.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Case Files include: applications, correspondence, supporting documents,

research, and other administrative forms used in the process. Case files may contain some or all of the following information: names, addresses, telephone numbers, e-mail addresses, credit card information, copies of documents furnished to the requester, and any additional information provided by the requester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a(a)(3), as amended.

44 U.S.C. 2104(a), as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains the application forms and related information concerning applicants and other persons of record, actions taken on requests, and schedules and status information concerning approved events.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in these case files may be retrieved by the name or date of the event.

SAFEGUARDS:

The case files are at all times maintained in buildings with secured doors. During business hours records are accessible only by authorized NARA personnel. Electronic records are accessible via passwords from terminals located in attended offices. After business hours, or when NARA personnel are not present in the offices, the paper records are secured in locked filing cabinets.

RETENTION AND DISPOSAL:

NARA case files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule supplement to FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For these case files, the system manager is Martin F. McGann, Office of Presidential Libraries (NL), Room 2200, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* (301) 837–1962. Fax: 301–837–3199.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer, Office of General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed above.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in these case files is obtained from persons who request use of the Presidential Libraries and Grounds and persons sponsoring, promoting, conducting or having supervision over activities associated with such requested uses.

[FR Doc. 2011–5986 Filed 3–11–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, March 17, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Proposed Rule—Parts 700, 701, 702, and 741 of NCUA's Rules and Regulations, Net Worth and Equity Ratio Definitions.

2. Final Rule—Part 704 of NCUA's Rules and Regulations, Corporate Credit Unions, Technical Corrections.

3. Delegations of Authority.

4. Final Rule—Part 702 of NCUA's Rules and Regulations, Definition of Low-Risk Assets.

5. Proposed Rule—Part 741 of NCUA's Rules and Regulations, Interest Rate Risk Policy.

6. Insurance Fund Report.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, March 17, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Insurance Appeals (3). Closed pursuant to exemption (6).

2. Consideration of Supervisory Activities. Closed pursuant to some or all of the following: exemptions (8), (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, *Telephone:* 703–518–6304

Mary Rupp,

Board Secretary.

[FR Doc. 2011–5984 Filed 3–10–11; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: The National Endowment for the Arts, NFAH.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the National Endowment for the Arts has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316, within 30 days from the date of this publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Sunil Iyengar, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5654 (this is not a toll-free number), fax (202) 682–5677.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer

and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide the National Endowment for the Arts' projected average estimates for the next three years:[1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 4 (FY 2011, 2012); 3 (FY 2013).

Respondents: 21,272.

Annual responses: 7,024 (FY 2011); 7,524 (FY 2012); 6,724 (FY 2013).

Frequency of Response: Once per request.

Average minutes per response: 11.25 minutes.

Burden hours: FY 2011: 1,139.6; FY 2012: 1,309.6; FY 2013: 1,109.6.

The NEA acknowledges that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Kathleen Edwards,

Support Services Supervisor, Administrative Services, National Endowment for the Arts.

[FR Doc. 2011–5701 Filed 3–11–11; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: The National Endowment for the Arts, NFAH.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the National Endowment for the Arts has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316, within 30 days from the date of this publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Sunil Iyengar, Director, Research & Analysis, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5654 (this is not a toll-free number), fax (202) 682–5677.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments were received in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide the National Endowment for the Arts' projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 4.

Respondents: 7,091.

Annual Responses: 7,091.

Frequency of Response: Once per request.

Average Minutes per Response: 11.25 minutes.

Burden Hours: 1,186.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Kathleen Edwards,

Support Services Supervisor, Administrative Services, National Endowment for the Arts.

[FR Doc. 2011–5705 Filed 3–11–11; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 75 FR 8818. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

Comments: Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at 703–292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the Industry University Cooperative Research Centers Program (I/UCRC).

OMB Number: 3145–0088.

Type of Request: Intent to seek approval to reinstate an information collection.

Abstract

Proposed Project

The Industry/University Cooperative Research Centers (I/UCRC) Program was initiated in 1973 to develop long-term partnerships among industry, academe and government. The National Science Foundation invests in these partnerships to promote research programs of mutual interest, contribute to the Nation's research infrastructure base and enhance the intellectual capacity of the engineering or science workforce through the integration of research and education. As appropriate, NSF encourages international collaborations that advance these goals within the global context.

The I/UCRC program seeks to achieve this by:

1. Contributing to the nation's research enterprise by developing long-term partnerships among industry, academe, and government;

2. Leveraging NSF funds with industry to support graduate students performing industrially relevant research; and

3. Expanding the innovation capacity of our nation's competitive workforce through partnerships between industries and universities.

4. Encouraging the nation's research enterprise to remain competitive through active engagement with academic and industrial leaders throughout the world.

The centers are catalyzed by a small investment from NSF and they are primarily supported by other private and public sector center members, with NSF taking a supporting role in the development and evolution of the I/UCRC. The I/UCRC program initially offers five-year (Phase I) continuing awards. This five-year period of support allows for the development of a strong partnership between the academic researchers and their industrial and government members. After five years, centers that continue to meet the I/UCRC program requirements may request support for a second five-year (Phase II) period. These awards allow centers to continue to grow and diversify their non-NSF memberships during their Phase II period. After ten years, a Phase III award provides a third five-year award for centers that

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide:

Average Expected Annual Number of Activities: 25,000

Average Number of Respondents per Activity: 200.

Annual Responses: 5,000,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 2,500,000.

demonstrate their viability, sustainability, and which have had a significant impact on industry research as measured through annual reports, site visits, and adherence to I/UCRC requirements. Centers are expected to be fully supported by industry, other Federal agencies, and State and local government partners after fifteen years as an I/UCRC.

Centers will be required to provide data to NSF and its authorized representatives (contractors or grantees). These data will be used for NSF internal reports, historical data, assessing program impact and recommending changes to strengthen the program, as well as for strengthening the program and to ensure the program remains responsive to a changing environment in order to secure future funding for continued I/UCRC program maintenance and growth. Updates to the I/UCRC database of performance indicators will be required annually. Centers will be responsible for submitting the following information after the award expires for their fiscal year of activity. The indicators are both quantitative and descriptive.

- Quantitative information from the most recently completed fiscal year such as:
  - Number and diversity of students, faculty, and industrial numbers involved in the center
  - Degrees granted to students involved in center activities
  - Amounts and sources of income to the center, and
  - Lists of patents, licenses, and publications created
- Operating budget and total funding:
  - Total funding
  - NSF I/UCRC funding received
  - Other NSF funding received
  - Additional support broken down by Industry, State, University, Other Federal, Non-Federal and other support
- Capital and in-kind support:
  - Equipment
  - Facilities
  - Personnel
  - Software
  - Other support
- Human resources:
  - Researchers (number of faculty scientists and engineers, number of non-faculty scientists and engineers)
  - Students (number of graduates, number of undergraduates)
  - Administration, number of full and part time professional and clerical staff
  - Information about broadening participation on the above with plans to increase broadening participation, if necessary
- Center director descriptors:
  - Position and rank of director
  - Status of tenure
  - Name and position of the person to whom the center director reports
  - Estimate of the percent of time the director devotes to center administration, other administration, research, teaching, other
- Center outcomes:
  - Students receiving degrees and type degree earned
  - Students hired by industry by type of degree
  - Publications
    - Number with center research
    - Number with Industrial Advisory Board Members
    - Number of presentations
- Intellectual property events:
  - Invention disclosures
  - Patent applications
  - Software copyrights
  - Patents granted and derived or both
  - Licensing agreements
  - Royalties realized

I/UCRCs will also include evaluation conducted by independent evaluators who cannot be from the department(s) with the institution(s) receiving funding for the I/UCRC award. The center evaluator will be responsible for:

- Preparing an annual report of center activities with respect to industrial collaboration
- Conducting a survey of all center participants to probe the participant satisfaction with center activities
- Compiling a set of quantitative indicators determined by NSF to analyze the management and operation of the center
- Participating in I/UCRC center and informational meetings
- Reporting to NSF on the center's status using a checklist provided by NSF to help determine if the center is adhering to the IUCRC policy and guidelines
- Bi-annual reporting to NSF
- Reporting to NSF within a month of each Industrial Advisory Board meeting on the top research highlights, technology transfer, patents, and major discoveries that demonstrate successful investments
- Performing exit interviews to determine why members chose to withdraw from the center
- Participating in continuous quality process improvement by providing information to the NSF I/UCRC program

Use of the Information: The data collected will be used for NSF internal reports, historical data, and for securing future funding for continued I/UCRC program maintenance and growth.

Estimate of Burden: 150 hours per center (160 sites) for fifty-six centers for a total of 8400 hours.

Respondents: Industry, academic institutions; non-profit institutions; government.

Estimated Number of Responses per Report: One from each of the 160 sites.

Dated: March 3, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–5801 Filed 3–11–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Director of the National Science Foundation has determined that the establishment of the U.S. Antarctic Program Blue Ribbon Panel is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: U.S. Antarctic Program Blue Ribbon Panel (#76826).

Purpose: The Panel will conduct an independent review of the current U.S. Antarctic Program to ensure the nation is pursing the best twenty-year trajectory for conducting science and diplomacy in Antarctica. The Panel will aim to identify and characterize a range of options for supporting and implementing the required national scientific endeavors, international collaborations and strong U.S. presence in Antarctica. The Panel will examine the appropriate amount of R&D and complementary scientific activities needed to make Antarctic activities most productive and affordable over the long term, as well as appropriate opportunities for international collaboration.

Responsible NSF Official: Karl Erb, Director, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. *Telephone:* 703/292–8030.

Dated: March 9, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–5734 Filed 3–11–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374; NRC–2011–0051]

Exelon Generation Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Withdrawal; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on March 4, 2011 (76 FR 12140), which informed the public that the NRC had granted Exelon's request to withdraw an application for amendment. This action is necessary to correct the description of the withdrawn amendment.

FOR FURTHER INFORMATION CONTACT: Eva A. Brown, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–2315, *e-mail: Eva.Brown@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 12140, appearing near the bottom of the first column, the first sentence of the second paragraph of the Notice should read:

The proposed amendment would revise Technical Specification 3.1.7, "Standby Liquid Control (SLC) System," to extend the completion time associated with Condition B from 8 hours to 72 hours.

Dated in Rockville, Maryland, this 7th day of March 2011.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Senior Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–5756 Filed 3–11–11; 8:45 am]

BILLING CODE 7590–01–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Amended Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power and Conservation Council), an interstate compact agency organized under the authority of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839 *et seq.* (Northwest Power Act).

ACTION: Notice of final action adopting the management plan elements of the Blackfoot River Subbasin Plan into the Council's *Columbia River Basin Fish and Wildlife Program.*

SUMMARY: Pursuant to Section 4(h) of the Northwest Power Act, the Council has amended its *Columbia River Basin Fish and Wildlife Program* to add the Blackfoot River Subbasin Plan. The program as amended may be found on the Council's Web site at *http://www.nwcouncil.org/fw/program* and then, for the subbasin plan elements and relevant decision documents in particular, at *http://www.nwcouncil.org/fw/subbasinplanning/Default.htm.* Further information and an explanation of this amendment process may be found in the documents on that page or by contacting the Northwest Power and Conservation Council at (503) 222–5161 or toll free (800) 452–5161.

Stephen L. Crow,

Executive Director.

[FR Doc. 2011–5758 Filed 3–11–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64059; File No. SR–BX–2011–013]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Co-Location Services

March 8, 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 March 1, 2011, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify pricing for co-location services. The Exchange will implement the proposed change on March 1, 2011. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is amending its co-location fee schedule to: (1) Institute a monthly fee of $300 for telecommunications and inter-cabinet cross connections; and (2) fees for additional patch and power cords.

Under the proposal, co-location customers having telecommunications cross-connections to approved telecommunication carriers in the datacenter will be assessed a monthly fee of $300 per connection. For the convenience of its customers, the Exchange allows telecommunications carriers to maintain a presence in the data center free of charge. In addition, inter-cabinet connections to other customers in the datacenter will be likewise assessed a $300 per-month, per-connection fee. These fees will only be assessed on the customer that requested the initiation of the connection, and cross-connections between cabinets being used by the same customer will not be assessed the fee.

The Exchange is also proposing to introduce fees for patch and power cords. Under the proposal, the Exchange will maintain an inventory of patch cords (ethernet and fiber optic cables) and power cords at the datacenter and make them available to customers should they desire to purchase them. The proposed fees for patch cords vary with their capabilities and length, with copper patch cord being charged at $4.50 + $.50 per foot; multi-mode fiber patch cord being priced at $20 + $1.50 per-meter, and single-mode fiber patch cord priced at $24 + $.75 per-meter. For

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

power cords, the Exchange proposes to charge $5 for 5–15P–C13 cords of two to four feet in length, and $10 for C14–C19 cords also of two to four feet in length.[3] The Exchange is making the cords available as a convenience to customers, and notes that use of Exchange-provided patch and power cords is completely voluntary, and that such cords may be freely obtained by [sic] other vendors for use by customers in the datacenter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange operates in a highly competitive market, in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competitive [sic] for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services. Moreover, all of the Exchange's fees for co-location services are equitably allocated and non-discriminatory, in that all co-location customers are offered the same range of products and services and there is no differentiation among customers with regard to the fees charged for a particular product, service, or piece of equipment.

It should be noted, however, that the costs associated with operating a co-location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and earning a return on its investment. Because fixed costs must be allocated among all customers, the Exchange's fee schedule reflects an effort to assess a range of relatively low fees for specific aspects of co-location services, which, in the aggregate, will allow the Exchange to cover its costs and earn a return on investment.

In the case of inter-cabinet connection fees, the proposed fee of $300 per month covers the marginal costs of establishing and maintaining such connections, and also allows customers maintaining such connections to contribute to the fixed costs of data center operation. Notably, because telecommunications providers are provided with free data center space as a convenience to co-located customers, the Exchange believes that it is reasonable to impose charges on persons connecting to such providers as a means of defraying the fixed rental cost incurred in making such space available to the telecommunications providers. The Exchange further believes that the number of data center cross connections correlates to the extent and complexity of a customer's operations within the data center. Accordingly, the Exchange believes that it is reasonable to use fees assessed on this basis as a means to recoup a share of fixed costs and earn a return on investment.

The Exchange also notes that the New York Stock Exchange ("NYSE") imposes charges for connections within the data center that include a $500 per month charge for connections between cabinets of the same customer, and charges for connectivity bundles that include a limited number of connections to telecommunications providers and connections within the data center for monthly fees ranging from $13,000 to $61,000 per month, depending on the number of connections and the bandwidth. NYSEArca charges $600 per month for all connections within its data center. *See http://www.nyse.com/pdfs/nyse_equities_pricelist.pdf* at page 14 and *http://www.nyse.com/pdfs/nysearcaMarketplaceFees112011-Clean.pdf* at p. 10. Accordingly, the Exchange believes that its proposed fee of $300 per month is reasonable in comparison with fees already charged for comparable services of other exchanges offering co-location.

With respect to the Exchange's proposed fees for power cords, the Exchange believes that its fees are a reasonable reflection of its costs to obtain and resell such cords as a convenience to its customers. Notably, the fees charged by the Exchange are generally comparable to prices charged by unregulated vendors for similar products. See *http://www.comegacity.com/cables-computer/power-cables/tripp-lite-p047-002-2ft-ac-power-cord-c19-c14-10;* and *http://www.cables.com/Products/NEMA-5-15P-TO-IEC320-C13-13a-4-Feet_PCRD-4-13A.aspx*. The same is true for the proposed patch cord pricing. *See http://www.cablestogo.com/product_list.asp?cat_id=3525;* and *http://www.cablestogo.com/product.asp?cat_id=2323&sku=33027*.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As discussed above, the Exchange believes that fees for co-location services are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition, and excessive fees for co-location services would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[3] The P, C, and number designations reflect differences in the shape of a cord's plug as well a cord's power throughput capability.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2011–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–013, and should be submitted on or before April 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5776 Filed 3–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64056; File No. SR–Phlx–2011–29]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Concerning Disseminated Quotations

March 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 24, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 1017, Openings in Options, and 1082, Firm Quotations, to extend, through July 31, 2011, a pilot program (the "pilot") under which the Exchange's rules describe the manner in which the PHLX XL® automated options trading system [3] disseminates quotations when (i) there is an opening imbalance in a particular series, and (ii) there is a Quote Exhaust (as described below) or a Market Exhaust (as described below) quote condition present in a particular series.

The current pilot is scheduled to expire March 31, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot through July 31, 2011.

Background

In June, 2009, the Exchange added several significant enhancements to its automated options trading platform (now known as PHLX XL), and adopted rules to reflect those enhancements.[4] As part of the system enhancements, the Exchange proposed to disseminate a "non-firm" quote condition on a bid or offer whose size is exhausted in certain situations. The non-exhausted side of the Exchange's disseminated quotation would remain firm up to its disseminated size. At the time the Exchange proposed the "one-sided non-firm" quote condition, the Options Price Reporting Authority ("OPRA") was only capable of disseminating option quotations for which both sides of the quotation are marked "non-firm." OPRA does not disseminate a "non-firm" condition for one side of a quotation while the other side of the quotation remains firm.[5]

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

[4] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[5] Currently, there is no mechanism for the Options Price Reporting Authority ("OPRA") to identify only one side of a quote as non-firm. The Exchange has approached OPRA to attempt to develop the capability to identify and implement such functionality. The Exchange has asked the

Accordingly, the Exchange proposed, for a pilot period scheduled to expire November 30, 2009, and later extended through September 30, 2010,[6] and then through March 31, 2011,[7] to disseminate quotations in such a circumstance with (i) a bid price of $0.00, with a size of one contract if the remaining size is a seller, or (ii) an offer price of $200,000, with a size of one contract if the remaining size is a buyer.

The Exchange subsequently modified the manner in which the PHLX XL system disseminates quotes when one side of the quote is exhausted but the opposite side still has marketable size at the disseminated price, as described in detail below.[8]

On October 7, 2010, the U.S. options exchanges, as participants in the OPRA Plan, voted to make technological changes that would enable OPRA to support a one-sided non-firm quote condition. These technological changes provide the opportunity for OPRA and the participants to design, test, and deploy modifications to their systems, and to establish connectivity with quotation vendors, that will support the one-sided non-firm quote condition. The Exchange is proposing to extend the current pilot through July 31, 2011, in order to account for the time required to complete the changes, and to account for the possibility that issues could arise that might delay the process.

Opening Imbalance

An opening "imbalance" occurs when all opening marketable size cannot be completely executed at or within an established Opening Quote Range ("OQR") for the affected series.[9] Currently, pursuant to Exchange Rule 1017(l)(v)(C)(7), any unexecuted contracts from the opening imbalance not traded or routed are displayed in the Exchange quote at the opening price for a period not to exceed ten seconds, and subsequently, cancelled back to the entering participant if they remain unexecuted and priced through the opening price, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. During this display time period, the PHLX XL system disseminates, if the imbalance is a buy imbalance, an offer of $0.00, with a size of zero contracts or, if the imbalance is a sell imbalance, a bid of $0.00, with a size of zero contracts, on the opposite side of the market from remaining unexecuted contracts.

The purpose of this provision is to indicate that the Exchange has exhausted all marketable interest, at or within the OQR, on one side of the market during the opening process yet has remaining unexecuted contracts on the opposite side of the market that are firm at the disseminated price and size.

Rule 1017(l)(v)(C)(7) is subject to the pilot, which is scheduled to expire March 31, 2011. The Exchange proposes to extend the pilot through July 31, 2011.

Quote Exhaust

Quote Exhaust occurs when the market at a particular price level on the Exchange includes a quote, and such market is exhausted by an inbound contra-side quote or order ("initiating quote or order"), and following such exhaustion, contracts remain to be executed from the initiating quote or order.[10]

Rather than immediately executing at the next available price, the PHLX XL system employs a timer (a "Quote Exhaust Timer"), not to exceed one second, in order to allow market participants to refresh their quotes. During the Quote Exhaust Timer, PHLX XL currently disseminates the "Reference Price" (the most recent execution price) for the remaining size, provided that such price does not lock an away market, in which case, the Exchange currently disseminates a bid and offer that is one Minimum Price Variation ("MPV") from the away market price. During the Quote Exhaust Timer, the Exchange disseminates: (i) A bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer.

Currently, Exchange Rules 1082(a)(ii)(B)(3)(g)(iv)(A)(3), 1082(a)(ii)(B)(3)(g)(iv)(A)(4), 1082(a)(ii)(B)(3)(g)(iv)(B)(2), and 1082(a)(ii)(B)(3)(g)(iv)(C) describe various scenarios under which the PHLX XL system trades, routes, or posts unexecuted contracts after determining the "Best Price" following a Quote Exhaust. These rules permit an up to 10-second time period during which participants may revise their quotes prior to the PHLX XL system taking action. In all of these scenarios, during the up to 10-second time period, the PHLX XL system currently disseminates an offer of $0.00, with a size of zero contracts if the remaining size is a buyer or, if the remaining size is a seller, a bid of $0.00, with a size of zero contracts, on the opposite side of the market from remaining unexecuted contracts.

Exchange Rules 1082(a)(ii)(B)(3)(g)(iv)(A)(3), 1082(a)(ii)(B)(3)(g)(iv)(A)(4), 1082(a)(ii)(B)(3)(g)(iv)(B)(2), and 1082(a)(ii)(B)(3)(g)(iv)(C) are subject to the pilot, which is scheduled to expire March 31, 2011. The Exchange proposes to extend the pilot through July 31, 2011.

Current Rule 1082(a)(ii)(B)(3)(g)(vi) describes what the PHLX XL system does if, after trading at the PHLX and/or routing, there are unexecuted contracts from the initiating order that are still marketable. In this situation, remaining contracts are posted for a period of time not to exceed 10 seconds and then cancelled after such period of time has elapsed, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. During the up to 10-second time period, the Exchange will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) a bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer.

Rule 1082(a)(ii)(B)(3)(g)(vi) is subject to the pilot. The Exchange proposes to extend the pilot through July 31, 2011.

Market Exhaust

Market Exhaust occurs when there are no PHLX XL participant quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the PHLX XL system initiates a "Market Exhaust Auction" for the initiating order.[11]

In this situation, the PHLX XL system will first determine if the initiating

Commission to revise this footnote by deleting the prior sentence and replace it with the following: "In November, 2010, OPRA filed for immediate effectiveness to enable its systems to support such functionality. *See* Securities Exchange Act Release No. 63400 (November 30, 2010), 75 FR 76058 (December 7, 2010)(SR–OPRA–2010–04)." *See* e-mail from Richard S. Rudolph, Associate General Counsel, NASDAQ OMX PHLX, to David Liu, Senior Special Counsel, Commission, dated March 8, 2011.

[6] *See supra* n.4.

[7] *See* Securities Exchange Act Release No. 63350 (November 19, 2010), 75 FR 73150 (November 29, 2010) (SR–Phlx–2010–156).

[8] *See* Securities Exchange Act Release No. 63024 (September 30, 2010), 75 FR 61799 (October 6, 2010) (SR–Phlx–2010–134).

[9] Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the lowest quote bid and highest quote offer, the PHLX XL system will calculate an OQR for a particular series, outside of which the PHLX XL system will not execute. *See* Exchange Rule 1017(l)(iii) and (iv).

[10] *See* Exchange Rule 1082(a)(ii)(B)(3).

[11] *See* Exchange Rule 1082(a)(ii)(B)(4)(b).

order, or a portion thereof, can be executed on the PHLX. Thereafter, if there are unexecuted contracts remaining in the initiating order the PHLX XL system will initiate a Market Exhaust Timer. During the Market Exhaust Timer, the Exchange disseminates any unexecuted size of the initiating order at the "Reference Price," which is the execution price of a portion of the initiating order, or one MPV from a better-priced away market price if the Reference Price would lock the away market. The PHLX XL system currently disseminates, on the opposite side of the market from the remaining unexecuted contracts: (i) A bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer. This provision is subject to the pilot. The Exchange proposes to extend the pilot through July 31, 2011.

Provisional Auction

Exchange Rule 1082(a)(ii)(B)(4)(d)(iv)(E) describes what PHLX XL does after it has explored all alternatives and there still remain unexecuted contracts. During the "Provisional Auction," any unexecuted contracts from the initiating order are displayed in the Exchange quote for the remaining size for a brief period not to exceed ten seconds and subsequently cancelled back to the entering participant if they remain unexecuted, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. During the brief period, the PHLX XL system currently disseminates, on the opposite side of the market from remaining unexecuted contracts: (i) A bid price of $0.00, with a size of zero contracts if the remaining size is a seller, or (ii) an offer price of $0.00, with a size of zero contracts if the remaining size is a buyer.

Rule 1082(a)(ii)(B)(4)(d)(iv)(E) is subject to the pilot. The Exchange proposes to extend the pilot through July 31, 2011.

The Exchange believes that the pilot benefits customers and the marketplace as a whole by enabling PHLX to effectively reflect the market interest the Exchange has that is firm and executable, while at the same time indicating the other side of the Exchange market is not firm and therefore not executable. This allows the Exchange to protect orders on its book and attempt to attract interest to execute against such order.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange further believes that the proposal is consistent with the SEC Quote Rule's provisions regarding non-firm quotations.[14] Specifically, Rule 602(a)(3)(i) provides that if, at any time a national securities exchange is open for trading, the exchange determines, pursuant to rules approved by the Commission, that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to vendors the data for a subject security required to be made available in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination and, upon such notification, the exchange is relieved of its obligations under paragraphs (a)(1) and (2) of Rule 602 relating to collecting and disseminating quotations, subject to certain other provisions of Rule 602(a)(3).

By disseminating a bid of $0.00 for a size of zero contracts, or an offer of $0.00 for a size of zero contracts in certain situations delineated above in the Exchange's rules, the Exchange believes that it is adequately communicating that it is non-firm on that side of the market in compliance with the Quote Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* 17 CFR 242.602(a)(3)(i) and (ii).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) [16] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–29. 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

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–29 and should be submitted on or before April 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5775 Filed 3–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64055; File No. SR–BYX–2011–005]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

March 8, 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 February 28, 2011, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members[5] of the Exchange pursuant to BYX 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 March 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 applicable to use of the Exchange effective March 1, 2011, in order to: (i) Amend the liquidity fees for adding liquidity, including increased fees to add non-displayed liquidity and adoption of a fee to add displayed liquidity unless a Member has an average daily volume of 10 million shares or more added per day in a given month; (ii) reduce certain standard routing fees; and (iii) expand the Exchange's Discounted Destination Specific Routing program to include a rebate for Destination Specific Orders[6] routed to EDGA Exchange.

(i) Amending the Liquidity Fees for Adding Liquidity

The Exchange has not previously provided any rebate or imposed any charge for adding displayed liquidity to the BYX order book in securities priced $1.00 and above. The Exchange proposes to introduce a tiered pricing structure applicable to added displayed liquidity in securities priced $1.00 and above, under which Members adding a daily average of 10 million shares or more of liquidity (including displayed and non-displayed liquidity) during a month will continue to be able to add displayed liquidity without charge, while Members adding a daily average of less than 10 million shares of liquidity during a month will be charged $0.0002 per share. Thus, while the fee change will result in a small fee increase for Members providing low volumes of liquidity on BYX, it will remain unchanged for Members providing higher volumes of liquidity.

The Exchange also proposes to increase its fee to add non-displayed liquidity to the BYX order book in securities priced $1.00 and above from a charge of $0.0005 per share to a charge of $0.0010 per share. As defined on the BYX fee schedule, the reference to "non-displayed liquidity" for purposes of the fee schedule includes liquidity resulting from all forms of Pegged Orders,[7] Mid-Point Peg Orders,[8] and Non-Displayed Orders,[9] but does not include liquidity resulting from Reserve Orders[10] or Discretionary Orders.[11]

The Exchange does not propose to change its pricing structure for added liquidity in securities priced below $1.00.

(ii) Reduced Standard Routing Fees

The Exchange proposes to reduce the fee that it charges for certain of its standard best execution routing strategies. The Exchange currently offers the Parallel D, Parallel 2D, CYCLE and RECYCLE routing strategies at a charge of $0.0028 per share for executions that occur at other trading venues as a result of such strategies in securities priced $1.00 and above.[12] The Exchange proposes to reduce the fee for use of such strategies to a charge of $0.0026 per share to in order to encourage use

[17] 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.

[6] As defined in BYX Rule 11.9(c)(12).

[7] As defined in BYX Rule 11.9(c)(8).

[8] As defined in BYX Rule 11.9(c)(9).

[9] As defined in BYX Rule 11.9(c)(11).

[10] As defined in BYX Rule 11.9(c)(1).

[11] As defined in BYX Rule 11.9(c)(10).

[12] The Exchange's routing strategies are described in Rule 11.13(a)(3).

of these strategies. To be consistent with this change, the Exchange proposes to charge 0.26%, rather than 0.28%, of the total dollar value of the executions at other trading venues as a result of Parallel D, Parallel 2D, CYCLE and RECYCLE in securities priced under $1.00 per share.

(iii) Destination Specific Routing to EDGA Exchange

The Exchange currently provides a discounted fee for Destination Specific Orders routed to certain market centers (NYSE, NYSE Arca and NASDAQ), which, in each instance is $0.0001 less per share for orders routed to such market centers by the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as "One Under" pricing). Consistent with this program, the Exchange proposes to adopt pricing for Destination Specific Orders routed to EDGA Exchange. Specifically, the Exchange proposes to provide a rebate of $0.00025 per share for BYX + EDGA Destination Specific Orders executed at EDGA, which is $0.0001 higher per share than the $0.00015 per share rebate provided by EDGA for orders that remove liquidity.

The Exchange imposes a charge of $0.0030 per share for Destination Specific Orders sent to and executed by any market center for which it does not have any separately identified pricing. Based on the change described above, the Exchange proposes to add EDGA to the list of market centers to which this charge does not apply.

Consistent with the changes described above, the Exchange proposes to change the title of its Discounted Destination Specific Routing section to refer to the program as "One Under/Better," rather than "One Under," and to add reference to EDGA.

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.[13] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[14] 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. 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 and credits are competitive with those charged by other venues.

While the establishment of tiered pricing for adding displayed liquidity to the Exchange's order book will result in a small increase in fees for some Members, this fee still remains lower than other markets that impose a fee to add liquidity, such as EDGA Exchange and NASDAQ OMX BX. Similarly, while the Exchange's proposal to increase the fee to add non-displayed liquidity to the Exchange will result in an increase in fees for Members that add non-displayed liquidity, this fee is lower than the fee to add liquidity (whether displayed or non-displayed) to NASDAQ OMX BX. As it relates to its differentiation between displayed and non-displayed liquidity, the Exchange believes that a fee structure that provides greater incentives to add displayed liquidity than incentives to add non-displayed liquidity is fair and reasonable. In addition, to the extent the proposed changes will result in increased fees charged to Members, the Exchange believes that any additional revenue it receives will allow the Exchange to devote additional capital to its operations and to continue to offer competitive pricing, which, in turn, will benefit Members of the Exchange.

The reduction of the routing fee for several of the BYX standard routing options and the adoption of new pricing for a Destination Specific Order that offers improvement of the execution rebate offered by another market center are changes intended to attract order flow to BYX by offering competitive rates to Exchange Members for strategies that first check the BYX order book before routing to away venues. Accordingly, the Exchange's proposal will result in reduced fees that will benefit Members due to the obvious economic savings those Members will receive and the potential of increased available liquidity at the Exchange.

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[15] and Rule 19b–4(f)(2) thereunder,[16] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to its members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BYX–2011–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2011–005. 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 website (*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

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2011–005, and should be submitted on or before April 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5774 Filed 3–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64053; File No. SR–FICC–2011–01]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Notify Participants That the Mortgage Backed Securities Division Intends To Move the Time at Which It Runs Its Daily Morning Pass

March 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 2, 2011, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to notify participants that the Mortgage Backed Securities Division ("MBSD") intends to move the time at which it runs its daily morning pass (also referred to as the "AM Pass") from 10:30 a.m. to 2 p.m. (EST).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to notify participants that MBSD intends to move the time at which it runs its daily morning pass from 10:30 a.m. to 2 p.m. (EST).[3] The proposed change to 2 p.m. for the morning pass will allow more trades to be included into the TBA Net and therefore will assist in reducing the amount of fails in the market in addition to reducing the related operational risk. The above change is being made at the request of The Securities Industry and Financial Markets Association ("SIFMA") MBS Operations Committee. In addition, MBSD reviewed the potential change with member firms not represented on the SIFMA Committee, and no objections were raised.

The effective date of this change will be announced to MBSD participants by Important Notice.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder applicable to FICC because it should provide for the prompt and accurate clearance and settlement of securities transactions by including a greater proportion of transactions in the TBA netting cycle. Additionally, the proposed rule change should result in fewer fails, and reduced operational risk.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact on or impose 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 relating to the proposed rule change have been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(4)[6] thereunder because the proposed rule effects a change in an existing service that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of FICC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2011–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2011–01. 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

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] MBSD also executes an evening pass (also referred to as the "PM Pass") at 8 p.m. (EST) that will remain unchanged. On days where MBSD executes its TBA Netting cycle, it immediately follows the completion of the morning pass.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

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 changes 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2011–01 and should be submitted on or before April 4, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5773 Filed 3–11–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64061; File No. SR–Phlx–2011–30]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Co-Location Services

March 8, 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 March 1, 2011, NASDAQ OMX PHLX LLC ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify pricing for co-location services. The Exchange will implement the proposed change on March 1, 2011. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is amending its co-location fee schedule to: (1) Institute a monthly fee of $300 for telecommunications and inter-cabinet cross connections; and (2) fees for additional patch and power cords.

Under the proposal, co-location customers having telecommunications cross-connections to approved telecommunication carriers in the datacenter will be assessed a monthly fee of $300 per connection. For the convenience of its customers, the Exchange allows telecommunications carriers to maintain a presence in the data center free of charge. In addition, inter-cabinet connections to other customers in the datacenter will be likewise assessed a $300 per-month, per-connection fee. These fees will only be assessed on the customer that requested the initiation of the connection, and cross-connections between cabinets being used by the same customer will not be assessed the fee.

The Exchange is also proposing to introduce fees for patch and power cords. Under the proposal, the Exchange will maintain an inventory of patch cords (ethernet and fiber optic cables) and power cords at the datacenter and make them available to customers should they desire to purchase them. The proposed fees for patch cords vary with their capabilities and length, with copper patch cord being charged at $4.50 + $.50 per foot; multi-mode fiber patch cord being priced at $20 + $1.50 per-meter, and single-mode fiber patch cord priced at $24 + $.75 per-meter. For power cords, the Exchange proposes to charge $5 for 5–15P—C13 cords of two to four feet in length, and $10 for C14–C19 cords also of two to four feet in length.[3] The Exchange is making the cords available as a convenience to customers, and notes that use of Exchange-provided patch and power cords is completely voluntary, and that such cords may be freely obtained by [sic] other vendors for use by customers in the datacenter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange operates in a highly competitive market, in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competitive [sic] for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The P, C, and number designations reflect differences in the shape of a cord's plug as well a cord's power throughput capability.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

of orders routed to it by affected members. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services. Moreover, all of the Exchange's fees for co-location services are equitably allocated and non-discriminatory, in that all co-location customers are offered the same range of products and services and there is no differentiation among customers with regard to the fees charged for a particular product, service, or piece of equipment.

It should be noted, however, that the costs associated with operating a co-location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and earning a return on its investment. Because fixed costs must be allocated among all customers, the Exchange's fee schedule reflects an effort to assess a range of relatively low fees for specific aspects of co-location services, which, in the aggregate, will allow the Exchange to cover its costs and earn a return on investment.

In the case of inter-cabinet connection fees, the proposed fee of $300 per month covers the marginal costs of establishing and maintaining such connections, and also allows customers maintaining such connections to contribute to the fixed costs of data center operation. Notably, because telecommunications providers are provided with free data center space as a convenience to co-located customers, the Exchange believes that it is reasonable to impose charges on persons connecting to such providers as a means of defraying the fixed rental cost incurred in making such space available to the telecommunications providers. The Exchange further believes that the number of data center cross connections correlates to the extent and complexity of a customer's operations within the data center. Accordingly, the Exchange believes that it is reasonable to use fees assessed on this basis as a means to recoup a share of fixed costs and earn a return on investment.

The Exchange also notes that the New York Stock Exchange ("NYSE") imposes charges for connections within the data center that include a $500 per month charge for connections between cabinets of the same customer, and charges for connectivity bundles that include a limited number of connections to telecommunications providers and connections within the data center for monthly fees ranging from $13,000 to $61,000 per month, depending on the number of connections and the bandwidth. NYSEArca charges $600 per month for all connections within its data center. *See http://www.nyse.com/pdfs/nyse_equities_pricelist.pdf* at page 14 and *http://www.nyse.com/pdfs/nysearcaMarketplaceFees112011–Clean.pdf* at p. 10. Accordingly, the Exchange believes that its proposed fee of $300 per month is reasonable in comparison with fees already charged for comparable services of other exchanges offering co-location.

With respect to the Exchange's proposed fees for power cords, the Exchange believes that its fees are a reasonable reflection of its costs to obtain and resell such cords as a convenience to its customers. Notably, the fees charged by the Exchange are generally comparable to prices charged by unregulated vendors for similar products. *See http://www.comegacity.com/cables-computer/power-cables/tripp-lite-p047-002-2ft-ac-power-cord-c19-c14-10*; and *http://www.cables.com/Products/NEMA-5-15P-TO-IEC320-C13-13a-4-Feet_PCRD-4-13A.aspx*. The same is true for the proposed patch cord pricing. *See http://www.cablestogo.com/product_list.asp?cat_id=3525;* and *http://www.cablestogo.com/product.asp?cat_id=2323&sku=33027* .

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As discussed above, the Exchange believes that fees for co-location services are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition, and excessive fees for co-location services would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–30. 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 website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

[6] 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2011–30, and should be submitted on or before April 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5764 Filed 3–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64060; File No. SR–NASDAQ–2011–035]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Co-Location Services

March 8, 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 March 1, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify pricing for co-location services. The Exchange will implement the proposed change on March 1, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is amending its co-location fee schedule to: (1) Institute a monthly fee of $300 for telecommunications and inter-cabinet cross connections; and (2) fees for additional patch and power cords.

Under the proposal, co-location customers having telecommunications cross-connections to approved telecommunication carriers in the datacenter will be assessed a monthly fee of $300 per connection. For the convenience of its customers, the Exchange allows telecommunications carriers to maintain a presence in the data center free of charge. In addition, inter-cabinet connections to other customers in the datacenter will be likewise assessed a $300 per-month, per-connection fee. These fees will only be assessed on the customer that requested the initiation of the connection, and cross-connections between cabinets being used by the same customer will not be assessed the fee.

The Exchange is also proposing to introduce fees for patch and power cords. Under the proposal, the Exchange will maintain an inventory of patch cords (ethernet and fiber optic cables) and power cords at the datacenter and make them available to customers should they desire to purchase them. The proposed fees for patch cords vary with their capabilities and length, with copper patch cord being charged at $4.50 + $.50 per foot; multi-mode fiber patch cord being priced at $20 + $1.50 per-meter, and single-mode fiber patch cord priced at $24 + $.75 per-meter. For power cords, the Exchange proposes to charge $5 for 5–15P—C13 cords of two to four feet in length, and $10 for C14—C19 cords also of two to four feet in length.[3] The Exchange is making the cords available as a convenience to customers, and notes that use of Exchange-provided patch and power cords is completely voluntary, and that such cords may be freely obtained by [sic] other vendors for use by customers in the datacenter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange operates in a highly competitive market, in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competitive [sic] for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services. Moreover, all of the Exchange's fees for co-location services are equitably allocated and non-discriminatory, in that all co-location customers are offered the same range of products and services and there is no differentiation among customers with regard to the fees charged for a particular product, service, or piece of equipment.

It should be noted, however, that the costs associated with operating a co-

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The P, C, and number designations reflect differences in the shape of a cord's plug as well a cord's power throughput capability.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and earning a return on its investment. Because fixed costs must be allocated among all customers, the Exchange's fee schedule reflects an effort to assess a range of relatively low fees for specific aspects of co-location services, which, in the aggregate, will allow the Exchange to cover its costs and earn a return on investment.

In the case of inter-cabinet connection fees, the proposed fee of $300 per month covers the marginal costs of establishing and maintaining such connections, and also allows customers maintaining such connections to contribute to the fixed costs of data center operation. Notably, because telecommunications providers are provided with free data center space as a convenience to co-located customers, the Exchange believes that it is reasonable to impose charges on persons connecting to such providers as a means of defraying the fixed rental cost incurred in making such space available to the telecommunications providers. The Exchange further believes that the number of data center cross connections correlates to the extent and complexity of a customer's operations within the data center. Accordingly, the Exchange believes that it is reasonable to use fees assessed on this basis as a means to recoup a share of fixed costs and earn a return on investment.

The Exchange also notes that the New York Stock Exchange ("NYSE") imposes charges for connections within the data center that include a $500 per month charge for connections between cabinets of the same customer, and charges for connectivity bundles that include a limited number of connections to telecommunications providers and connections within the data center for monthly fees ranging from $13,000 to $61,000 per month, depending on the number of connections and the bandwidth. NYSEArca charges $600 per month for all connections within its data center. *See http://www.nyse.com/pdfs/nyse_equities_pricelist.pdf* at page 14 and. *http://www.nyse.com/pdfs/nysearcaMarketplaceFees112011–Clean.pdf* at p. 10. Accordingly, the Exchange believes that its proposed fee of $300 per month is reasonable in comparison with fees already charged for comparable services of other exchanges offering co-location.

With respect to the Exchange's proposed fees for power cords, the Exchange believes that its fees are a reasonable reflection of its costs to obtain and resell such cords as a convenience to its customers. Notably, the fees charged by the Exchange are generally comparable to prices charged by unregulated vendors for similar products. See *http://www.comegacity.com/cables-computer/power-cables/tripp-lite-p047-002-2ft-ac-power-cord-c19-c14-10;* and *http://www.cables.com/Products/NEMA-5-15P-TO-IEC320-C13-13a-4-Feet_PCRD-4-13A.aspx*. The same is true for the proposed patch cord pricing. *See http://www.cablestogo.com/product_list.asp?cat_id=3525;* and *http://www.cablestogo.com/product.asp?cat_id=2323&sku=33027.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As discussed above, the Exchange believes that fees for co-location services are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition, and excessive fees for co-location services would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–035. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–035, and should be submitted on or before April 4, 2011.

[6] 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5763 Filed 3–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64058; File No. SR–C2–2011–006]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Opening System

March 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2011, the C2 Options Exchange, Incorporated ("Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 6.11, *Openings (and sometimes Closings).* The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/RuleFilings.aspx*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 6.11 describes the Exchange's procedures for conducting trading rotations. The Exchange is proposing to amend Rule 6.11 in various respects.

First, to have more flexibility in a manner that is consistent with other C2 rules with order eligibility provisions, the Exchange is proposing to amend Rule 6.11 to include an order eligibility provision. In particular, Rule 6.11 will be amended to provide that the Exchange shall designate the eligible order size, eligible order type, eligible order origin code (*i.e.,* public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders) that the System will accept for rotations on a class-by-class basis. The proposal would not, however, permit the Exchange to discriminate among individual market participants of the same type (*e.g.,* permit certain market-maker orders but not others to be eligible). The Rule will also be amended to delete a reference to spread orders and contingency orders not being eligible to participate in opening trades or in the determination of the opening price, expected opening price or expected opening size. (As revised, the Exchange would determine whether to designate these orders types as eligible on a class-by-class basis, just as it would for any other order type.) Any changes to the order eligibility parameters determined by the Exchange would be announced to C2 Participants via Regulatory Circular.

This proposed change to include order eligibility requirements within Rule 6.11 is consistent with the order eligibility requirements contained in other rules, such as the order eligibility requirements for Rule 6.14, *SAL* (SAL is a feature that auctions marketable orders for price improvement over the national best bid and offer). The proposed rule change is also consistent with the provisions of Rule 6.10, *Orders Types Defined,*[5] which provides that the classes and/or systems for which the orders types described in Rule 6.10 shall be available will be as provided in the Exchange Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

Second, the Exchange is proposing to adopt new Interpretation and Policy .01 to Rule 6.11 to provide that the Exchange may determine on a class-by-class basis which electronic allocation algorithm[6] would apply for rotations. Currently Rule 6.11(g) provides that, in determining priority of orders and quotes to be traded at a single clearing price, the System gives priority to public customer market orders first (with multiple orders ranked based on time priority), then to non-public customer market orders second (with multiple orders being ranked based on time priority), then to multiple quotes and orders whose price is better than the opening price (with multiple quotes and orders being ranked in accordance with the allocation algorithm in effect for the option class), then to limit orders and quotes at the opening price (with multiple orders and quotes ranked in accordance with the allocation algorithm in effect for the class). Any remaining marketable order(s) are then exposed and allocated in accordance with the matching algorithms in effect for the class. The Exchange is proposing to remove these specific allocation algorithm descriptions. Instead, the provision will be amended to provide that, in determining the priority of orders and quotes to be traded at a single clearing price, the System will give priority to market orders first, then to limit orders and quotes whose price is better than the opening price, and then to resting orders and quotes at the opening price. In addition, as indicated above, the Exchange is proposing to adopt new Interpretation and Policy .01 to Rule 6.11. Proposed Interpretation and Policy .01 to Rule 6.11 will provide that the Exchange may determine on a class-by-class basis which electronic allocation algorithm would apply for rotations. This change will also provide the Exchange with additional flexibility to permit the allocation algorithm in effect for a rotation to be different from the allocation algorithm in effect for the option class. All pronouncements regarding allocation algorithm determinations by the Exchange will be announced to C2 Participants via Regulatory Circular.

In conjunction with this change, the Exchange is also proposing to modify Rule 6.11 to codify and describe the

[7] 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)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange is also proposing to change the title of Rule 6.10 to "Order Types Defined."

[6] The allocation algorithms include base execution algorithms (price-time, pro-rata, and price-time with primary public customer priority and secondary trade participation right priority) and an optional market turner priority overlay. *See* Rule 6.12, *Order Execution and Priority.*

manner in which the System handles opening imbalances in series that open at a minimum price increment (*e.g.,* a series that opens at a price of $0.05 when the series is quoted in $0.05 increments and a series that opens at a price of $0.01 when the series is quoted in $0.01 increments). In those scenarios, the System opens even if a sell market order imbalance exists. In addition, the Exchange may determine to apply a separate electronic allocation algorithm for series that open at a minimum price increment due to a sell market order imbalance. As indicated above, pronouncements regarding allocation algorithm determinations will be announced via Regulatory Circular.

The matching algorithm applied for rotations for each option class will be pursuant to Rule 6.12. Thus, the Exchange is not creating any new algorithms, but is amending Rule 6.11 to make clear that the Exchange may determine the applicable allocation algorithm for rotations as described above and to provide the flexibility for the Exchange to choose an algorithm from among the existing algorithms to be applied to rotations, rather than simply defaulting to the algorithm in effect for intra-day trading in the option class.

Finally, the Exchange is proposing non-substantive amendments to Rule 6.11, so that the rule text can generally be more consistently organized, numbered and worded. For example, the Exchange is proposing to add descriptive headings to sections of the rule that do not already have such headings, and to replace multiple references to Exchange determinations being announced via Regulatory Circular with a single reference in proposed Interpretation and Policy .02, which will provide that all pronouncements regarding determinations by the Exchange pursuant to Rule 6.11 and the Interpretations and Policies thereunder will be announced to Participants via Regulatory Circular.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5) of the Act[8] in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed change would provide more flexibility and clarity in our rotations rule. The Exchange also believes that the proposed order eligibility provision is consistent with order eligibility provisions in other existing rules, such as the SAL and order type rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–006 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–C2–2011–006. 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 am and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2011–006 and should be submitted on or before April 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5762 Filed 3–11–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64057; File No. SR–CBOE–2011–019]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the CBOE Fees Schedule

March 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 25, 2011 [sic], Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the Fees Schedule to amend its linkage fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, when the Exchange receives a customer order that has an original size of 500 or more contracts that is routed for execution, in whole or in part, to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan (a "Customer Linkage Transaction"), the Exchange charges $0.35 per contract in addition to the customary CBOE execution charges.[3] The Exchange proposes to reduce the qualifying customer order size from 500 or more contracts to 100 or more contracts. This change will allow the Exchange to pass through some of the transaction costs incurred by the Exchange associated with the execution and handling of larger orders.

The Exchange further proposes to eliminate the flat $0.35 per contract fee for Customer Linkage Transactions, and instead pass through the actual transaction fee(s) assessed on the transaction(s) by the exchange(s) to which the order was routed, minus a $0.05 per contract discount. These changes allow the Exchange to more accurately pass through some of the transaction costs incurred by the Exchange associated with Customer Linkage Transactions while still offering an added incentive to route orders to CBOE.

The Exchange does not propose to collect these fees for orders initially routed for manual handling by CBOE Floor Brokers. More specifically, the Exchange will exempt from these pass-through fees customer orders that originate from the trading floor via an Exchange sponsored terminal like a Floor Broker Workstation.[4] The primary objective of the fee change is to recoup some of the costs associated with large electronic orders that are initially transmitted to CBOE by parties who, in many instances, could be seeking to avoid being assessed another market's transaction fees. Orders that are initially routed to CBOE Floor Brokers are not attempting to avoid fees since they incur brokerage commission charges in connection with manual handling. Rather, orders that are handled by CBOE Floor Brokers are large, complex orders that are primarily executed on the CBOE, which only are transmitted to away markets if, during their execution on CBOE, it is necessary to sweep some away markets.

The proposed fee change will take effect on March 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that the passing through of the actual transaction fees assessed on away exchanges for Customer Linkage Transactions is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. Exempting customer orders that originate from an Exchange-sponsored terminal from the pass-through fees is equitable because Floor Brokers and their customers are already assessed a number of fees in connection with trading on the Exchange Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBOE Fees Schedule, Section 20. *See, also,* Securities Exchange Act Release No. 63701 (January 11, 2011), 76 FR 2934 (January 18, 2011) (SR–CBOE–2010–116) and Securities Exchange Act Release No. 62793 (August 30, 2010), 75 FR 54408 (September 7, 2010) (SR–CBOE–2010–076).

[4] The Floor Broker Workstation is a system for electronically entering and managing orders on the Exchange floor. Floor Broker Workstations are operated by Floor Brokers.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 C.F.R. 240.19b–4(f)(2).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–019. 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 website (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. SR–CBOE–2011–019 and should be submitted on or before April 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5761 Filed 3–11–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64052; File No. SR–C2–2011–010]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Revenue Sharing Program With Correlix, Inc.

March 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 1, 2011, C2 Options Exchange, Incorporated ("C2" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by C2. 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

C2 Options Exchange, Incorporated ("C2" or "Exchange") proposes to establish a revenue sharing program with Correlix, Inc. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, C2 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. C2 has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing a proposed rule change to establish a revenue sharing program with Correlix. The Exchange has entered into an agreement with Correlix to provide to users of the Exchange real-time analytical tools to measure the latency of orders to and from its systems. Under the agreement, the Exchange will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange's systems. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for the Exchange varies depending on the number of unique acronyms and logons selected by the customer for monitoring by Correlix. For the Exchange, the fee will be an initial $1,500 monthly base fee for the first unique acronym monitored. For each additional unique acronym sought to be monitored, an additional monthly charge of $1,500 will be assessed. The monthly price for each unique acronym includes the monitoring of up to 25 Exchange logons associated with that particular acronym. Customers that wish to exceed 25 logons per-acronym for monitoring can purchase additional 25 logon blocks for an additional fee of $750 per month per acronym.

Under the program, Correlix will see an individualized unique Exchange-generated identifier that will allow Correlix RaceTeam to determine round trip order time,[3] from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. The RaceTeam product offering does not measure latency outside of the Exchange extranet. The unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscriber firms related to latency. Correlix will not see subscriber's individual order detail such as security, price or size. Individual RaceTeam subscribers' logins will restrict access to only their own latency data. Correlix will see no specific information regarding the trading activity of non-subscribers. The Exchange believes that the above arrangement will provide users of its systems greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The product measures latency of orders whether the orders are rejected, executed or partially executed.

the provisions of the Securities Exchange Act of 1934 ("Act"),[4] in general, and with Section 6(b)(5)[5] of the Act in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will provide greater transparency into trade and information processing and thus allow market participants to make better informed and more efficient trading decisions.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act in general, and with Section 6(b)(4)[6] of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among C2 Trading Permit Holders and other persons using any facility or system which the Exchange operates or controls. In particular, the Exchange notes that the use of Correlix latency measurement services is entirely voluntary and made available on a non-discriminatory basis. In addition, the Exchange believes the proposed fees are equitable and reasonable in that they are charged uniformly to all market participants and are comparable to the fees charged by Correlix in connection with its revenue sharing programs with other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78(f)(b)(5).

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2011–010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, 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–C2–2011–010 and should be submitted on or before April 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5720 Filed 3–11–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange satisfied this five-day pre-filing requirement.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64051; File No. SR–CBOE–2011–023]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Revenue Sharing Program With Correlix, Inc.

March 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 1, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to establish a revenue sharing program with Correlix, Inc. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing a proposed rule change to establish a revenue sharing program with Correlix. The Exchange has entered into an agreement with Correlix to provide to users of the Exchange real-time analytical tools to measure the latency of orders to and from its systems. Under the agreement, the Exchange will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange's systems. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for the Exchange varies depending on the number of unique acronyms and logons selected by the customer for monitoring by Correlix. For the Exchange, the fee will be an initial $1,500 monthly base fee for the first unique acronym monitored. For each additional unique acronym sought to be monitored, an additional monthly charge of $1,500 will be assessed. The monthly price for each unique acronym includes the monitoring of up to 25 Exchange logons associated with that particular acronym. Customers that wish to exceed 25 logons per-acronym for monitoring can purchase additional 25 logon blocks for an additional fee of $750 per month per acronym.

Under the program, Correlix will see an individualized unique Exchange-generated identifier that will allow Correlix RaceTeam to determine round trip order time,[3] from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. The RaceTeam product offering does not measure latency outside of the Exchange extranet. The unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscriber firms related to latency. Correlix will not see subscriber's individual order detail such as security, price or size. Individual RaceTeam subscribers' logins will restrict access to only their own latency data. Correlix will see no specific information regarding the trading activity of non-subscribers. The Exchange believes that the above arrangement will provide users of its systems greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 ("Act"),[4] in general, and with Section 6(b)(5)[5] of the Act in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will provide greater transparency into trade and information processing and thus allow market participants to make better informed and more efficient trading decisions.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act in general, and with Section 6(b)(4)[6] of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among CBOE Trading Permit Holders and other persons using any facility or system which the Exchange operates or controls. In particular, the Exchange notes that the use of Correlix latency measurement services is entirely voluntary and made available on a non-discriminatory basis. In addition, the Exchange believes the proposed fees are equitable and reasonable in that they are charged uniformly to all market participants and are comparable to the fees charged by Correlix in connection with its revenue sharing programs with other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become

[3] The product measures latency of orders whether the orders are rejected, executed or partially executed.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78(f)(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange satisfied this five-day pre-filing requirement.

effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–023. 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–CBOE–2011–023 and should be submitted on or before April 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5719 Filed 3–11–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64050; File No. SR–NASDAQ–2011–034]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enhance the Investor Support Program

March 8, 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 February 28, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes changes to the fee provisions of Rule 7014 (Investor Support Program) to increase the rebate for adding targeted liquidity within the Investor Support Program. The Exchange also proposes to amend a typographical error.

NASDAQ has designated this fee change proposal effective and operative upon filing.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing changes to the fee provisions of Rule 7014 to increase the rebate for adding targeted liquidity within the Investor Support Program. The Exchange also proposes to amend a typographical error.

The Exchange established an Investor Support Program ("ISP") that enables NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities ("targeted liquidity").[3] The goal of the ISP is to incentivize members to provide such targeted liquidity to the NASDAQ Market Center.[4] The Exchange noted in

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a detailed description of the Investor Support Program, *see* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness) (the "ISP Filing"). *See also* Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ–2010–153) (notice of filing and immediate effectiveness); 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ–2010–154) (notice of filing and immediate effectiveness); and 63891 (February 11, 2011), 76 FR 9384 (February 17, 2011) (NASDAQ–2011–022) (notice of filing and immediate effectiveness).

[4] The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter ("OTC") markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, "Concept Release"). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or "dark," liquidity. *See also* Mary L. Schapiro, *Strengthening Our Equity Market*

the ISP Filing that maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange now proposes an adjustment to the Investor Support Program, in the form of an increase in the rebate for the ISP for members that exceed the Baseline Participation Ratio [5] by at least 0.86%. The primary objective in making this adjustment is to further incentivize members to provide targeted liquidity to the Exchange by increasing the rebate for those that bring even larger amounts of liquidity to NASDAQ.

The ISP generally compares a member's Participation Ratio for the current month to the same member's Participation Ratio in August 2010 (known as the "Baseline Participation Ratio"). This ratio is determined by measuring the number of shares in liquidity-providing orders entered by the member (through any NASDAQ port) and executed on NASDAQ and dividing this number by the consolidated (across all trading venues) share volume of System Securities [6] traded in the given month.[7] To determine the amount of the ISP credit pursuant to the program, pursuant to sub-section (b), NASDAQ would multiply $0.0003 or $0.0004 by the lower of: the number of shares of displayed liquidity provided in orders entered by the member thorough its ISP-designated ports and executed in the NASDAQ Market Center during the given month; or the amount of Added Liquidity [8] for the given month, which is compared to the member's Baseline Participation Ratio. The Exchange proposes to increase the tiered rebate to a rate of $0.0005 for members that bring a greater amount of targeted liquidity.

Specifically, the Exchange proposes to clarify subsection (b) to state that, subject to the conditions set forth in subsection (c),[9] in addition to the current tiered rebate rates of $0.0003 or $0.0004, the rebate rate may also be $0.0005. The Exchange adds proposed sub-section (c)(3) to indicate that the $0.0005 rebate rate is available to those members that bring in an even greater amount of liquidity by exceeding the Baseline Participation Ratio by at least 0.86%. Thus, to qualify for the $0.0005 rebate rate, a member would essentially have to bring twice as much targeted liquidity to the Exchange (in the form of Added Liquidity relative to the Baseline Participation Ratio) as the member would need to bring to the Exchange to qualify for the next-lower $0.0004 rebate rate.[10]

The Exchange believes that the increased rebate rate should encourage members to strive to bring even more retail and institutional orders in exchange-traded securities to the Exchange. The Exchange notes that the rebate concept remains the same after this filing: the more added liquidity a member brings to the Exchange, the higher the member's potential rebate rate may be within the parameters of Rule 7014.

The ISP is designed to operate on a monthly cycle, both from the perspective of targeted flow brought to the Exchange and ISP rebates to members that brought such flow. Since its inception,[11] the ISP fee program has been, and continues to be, non-discriminatory, reasonable, and effective in attracting targeted liquidity to the NASDAQ Market Center. The primary objective in making the proposed adjustment is to encourage members to bring larger amounts of targeted liquidity to the Exchange by increasing the rebate for such liquidity. The Exchange believes that its proposal is decidedly non-discriminatory because it does not favor or distinguish any group of ISP participants while promoting the clear goal of the ISP.

In terms of housekeeping changes, the Exchange proposes to correct a typographical error in subsection (c)(2) of Rule 7014. On February 2, 2011, the Exchange filed an immediately effective fee proposal regarding the Investor Support Program. By this fee filing, the Exchange stated in subsection (b) of Rule 7014 that, subject to the conditions set forth in section (c) of Rule 7014 the ISP rebate rate may be $0.0004 (as discussed herein); and stated in sub-section (c)(2) that the additional tiered rebate rate would be available to those members that bring in an even greater amount of liquidity by exceeding the Baseline Participation Ratio by at least 0.43% (the "$0.0004 filing").[12]

In the $0.0004 filing, the Exchange correctly stated, four times in the body of its filing, that the new additional rebate rate was $0.0004. The Exchange likewise correctly stated in the rule text, as reflected in subsection (b) of Rule 7014, that the additional rebate rate was $0.0004. However, in the second reference to the additional rebate rate in the rule text at subsection (c)(2) of the $0.0004 filing, the Exchange made a typographical error by adding an extra zero to the rebate rate of $0.0004 (e.g. $.00004).

The Exchange believes that it is clear from the $0.0004 filing that the Exchange intended to add an additional tiered rebate rate of $0.0004. The Exchange now corrects this typographical error by removing the extraneous zero so that the rebate rate in

Structure (Speech at the Economic Club of New York, Sept. 7, 2010) ("Schapiro Speech," available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[5] The term "Participation Ratio" is defined as: for a given member in a given month, the ratio of (i) the number of shares of liquidity provided in orders entered by the member through any of its Nasdaq ports and executed in the Nasdaq Market Center during such month to (ii) the Consolidated Volume. Rule 7014(d)(4). The term "Consolidated Volume" is defined as: for a given member in a given month, the consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month. Rule 7014(d)(6).

[6] The term "System Securities" is defined as: all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan. Rule 4751(b).

[7] *See* Rule 7014(d)(2) and (d)(4).

[8] The term "Added Liquidity" is defined as: for a given member in a given month, the number of shares calculated by (i) subtracting from such member's Participation Ratio for that month the member's Baseline Participation Ratio, and then (ii) multiplying the resulting difference by the average daily consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month; provided that if the result is a negative number, the Added Liquidity amount shall be deemed zero. Rule 7014(d)(1).

[9] Subsection (c)(1) states that a member shall not be entitled to receive any ISP credit pursuant to (b) for a given month if any of the following applies: (A) the member's ISP Execution Ratio for the month in question is 10 or above; or (B) the average daily number of shares of liquidity provided in orders entered by the member through its ISP-designated ports and executed in the Nasdaq Market Center during the month is below 10 million, provided that in calculating such average, Nasdaq will exclude days when it is open for less than the entire regular trading day.

[10] Subsections (c)(2) and (c)(3) as amended state: (2) A member shall not be entitled to receive an ISP credit pursuant to section (b) of this Rule at the $0.0004 rate if for a given month the member does not exceed its Baseline Participation Ratio by at least 0.43%. (3) A member shall not be entitled to receive an ISP credit pursuant to section (b) of this Rule at the $0.0005 rate if for a given month the member does not exceed its Baseline Participation Ratio by at least 0.86%.

[11] *See* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness).

[12] *See* Securities Exchange Act Release No. 63891 (February 11, 2011) (NASDAQ–2011–022) (notice of filing and immediate effectiveness).

subsection (c)(2) is reflected as $0.0004, in conformity with subsection (b) of Rule 7014.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Investor Support Program encourages members to add targeted liquidity that is executed in the NASDAQ Market Center. The primary objective in making this enhancement to the Investor Support Program is to add an even greater amount of targeted liquidity to the Exchange. The rule change proposal, like the ISP, is "not designed to permit unfair discrimination" [15] but, rather, is intended to promote submission of liquidity-providing orders to NASDAQ, which would benefit all NASDAQ members and all investors. Likewise, the proposal, like the ISP, is consistent with the Act's requirement "for the equitable allocation of reasonable dues, fees, and other charges." [16] As explained in the immediately preceding paragraphs, the proposal enhances the goal of the ISP. Members who choose to significantly increase the volume of ISP-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore an additional credit, as contemplated in the proposed enhanced program, is equitable. Finally, NASDAQ notes that the intense competition among several national securities exchanges and numerous OTC venues effectively guarantees that fees and credits for the execution of trades in NMS securities remain equitable and are not unfairly discriminatory.[17]

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See* Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5).

[16] *See* Section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4).

[17] *See, e.g.,* Concept Release (discusses the various venues where trades are executed).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–034. 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–NASDAQ–2011–034 and should be submitted on or before April 4, 2011.

[18] 15 U.S.C. 78s(b)(3)(a)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5718 Filed 3–11–11; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Admiralty Holding Co., American Consolidated Management Group, Inc., DnC Multimedia Corp., Dorsey Trailers, Inc. (n/k/a DT Liquidation, Inc.), and ElectraCapital, Inc. (a/k/a Electra Capital, Inc.); Order of Suspension of Trading

March 10, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Admiralty Holding Co. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Consolidated Management Group, Inc. because it has not filed any periodic

reports since the period ended March 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DnC Multimedia Corp. because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dorsey Trailers, Inc. (n/k/a DT Liquidation, Inc.) because it has not filed any periodic reports since the period ended July 1, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ElectraCapital, Inc. (a/k/a Electra Capital, Inc.) because it has not filed any periodic reports since the period ended September 30, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on March 10, 2011, through 11:59 p.m. EDT on March 23, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–5934 Filed 3–10–11; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 13, 2011.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jody Raskind, Chief, Microenterprise Development Branch, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jody Raskind, *mail to:* Chief, Microenterprise Development Branch, 202–205–7076 or *jody.raskind@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030 or *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Information collection is needed to ensure that Microloan Program activity meets the statutory goals of assisting the statutorily mandated target market. The information is used by the reporting participants and the SBA to assist with portfolio management, risk management, loan servicing and collections and to enable SBA to ensure that targeted groups are long served, and understand trends over time. It's also allows SBA to monitor use of funds ensure compliance and provide education.

Title: "Microloan Program Electronic Reporting System MPERS)"

Description of Respondents: Microloan Program Intermediary Lenders.

Form Number: N/A.

Annual Responses: 2,500.

Annual Burden: 625.

SUPPLEMENTARY INFORMATION:

The information collected through this online application form will be scored and used to determine the eligibility and qualifications of interested non-profit applicants. SBA will evaluate applications using four major categories: The applicant organization's strengths and weaknesses; its history of providing microloans and technical assistance; the qualifications of its governing board, officers, and key staff; and its financial health. Qualified non-profit applicants will be selected to partner with the SBA as Microloan Program Intermediary Lenders for the purpose of providing microloans (loans of $50,000 or less), and business based training and technical assistance to eligible small businesses.

Title: "New Microloan Intermediary Lender Application"

Description of Respondents: Microloan Program Intermediary Lender Applicants.

Form Number: N/A.

Annual Responses: 25.

Annual Burden: 9.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–5844 Filed 3–11–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12484 and #12485]

Massachusetts Disaster #MA–00032

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Massachusetts (FEMA—1959—DR), dated 03/07/2011.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 01/11/2011 through 01/12/2011.

Effective Date: 03/07/2011.

Physical Loan Application Deadline Date: 05/06/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/07/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/07/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Berkshire, Essex, Hampshire, Middlesex, Norfolk, Suffolk.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12484B and for economic injury is 12485B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–5842 Filed 3–11–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12479 and #12480]

New York Disaster Number NY–00102

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA—1957—DR), dated 02/18/2011.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 12/26/2010 through 12/27/2010.

Effective Date: 03/07/2011.

Physical Loan Application Deadline Date: 04/19/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 11/16/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 02/18/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bronx, Queens.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–5843 Filed 3–11–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. ITA–2011–0017]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Federal Transit Administration, DOT.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Department of Transportation (DOT) has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted before April 13, 2011.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, *Attention:* FTA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Federal Transit Administration and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for sub mission for other generic mechanisms that are designed to yield quantitative results.

The agency received no comments in response to the 60-day notice published in the **Federal Register** on December 22, 2010 (75 FR 80542).

Current Actions: New collection of information.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Below we provide the Federal Transit Administration's projected average estimates for the next three years:

Average Expected Annual Number of Activities: 4.

Respondents: 2,700.

Annual Responses: 2,700.

Frequency of Response: Once per request.

Average Minutes per Response: 3.8.

Burden Hours: 592 annually.

Issued On: March 8, 2011.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2011–5830 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 7, 2010. No comments were received.

DATES: Comments must be submitted on or before April 13, 2011.

FOR FURTHER INFORMATION CONTACT: Frances Jerry, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–5861; or e-mail: *frances.jerry@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Uniform Financial Reporting Requirements.

OMB Control Number: 2133–0005.

Type of Request: Extension of currently approved information collection.

Affected Public: Vessel owners acquiring ships from MARAD on credit, companies chartering ships from MARAD, and companies having Title XI guarantee obligations.

Form(s): MA–172.

Abstract: The Uniform Financial Reporting Requirements are used as a basis for preparing and filing semi-annual and annual financial statements with the Maritime Administration. Regulations requiring financial reports to MARAD are authorized by Section 801, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1211). Financial reports are also required by regulation of purchasers of ships from MARAD on credit, companies chartering ships from MARAD, and of companies having Title XI guarantee obligations (46 CFR part 298).

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Annual Estimated Burden Hours: 1,254.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: March 7, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–5748 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0019]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Robert Bouchard, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5076; or e-mail *Robert.Bouchard@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: U.S. Port and Terminal Inventory Survey.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0539.

Form Numbers: MA–1049.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Port and Terminal Infrastructure Data Collection Survey will provide MARAD with key U.S. marine terminal data to enable the agency to provide timely Information to determine the present level of system performance and future requirements.

Need and Use of the Information: The biennial survey will assist MARAD in determining the number and type of facilities available for moving cargo. Emphasis will be on throughput capacity and the adequacy of the number and type of terminals available to move cargo efficiently through the U.S. global freight transportation system. The survey will also provide an overview of ownership of marine terminals in the United States.

Description of Respondents: U.S. port authorities, marine terminal operators and owners of marine terminal companies.

Annual Responses: 636 responses.

Annual Burden: 954 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.
Dated: March 3, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–5747 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2011 0020]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GIG 'EM.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0020 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 13, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0020. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GIG 'EM is:

Intended Commercial Use of Vessel: "Captained charter sailing excursions and instruction."

Geographic Region: "Michigan."

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 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.
Dated: March 3, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–5741 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2011 0022]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SANBAR.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0022 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 13, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0022. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SANBAR is:

Intended Commercial Use of Vessel: "Short (1–3 hr) tours of Baltimore, MD Inner Harbor; multi day charters on Chesapeake Bay and tributaries and Delaware Bay for team building exercises, hands-on power and sailboat familiarization."

Geographic Region: "Maryland, Virginia, Delaware, Pennsylvania and Florida."

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 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: March 3, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–5745 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2011 0024]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TIGERS EYE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0024 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 13, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0024. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, e-mail *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TIGERS EYE is:

Intended Commercial Use of Vessel: "The intended use is for occasional charters carrying 12 or less passengers which would include a combination of either day and/or overnight trips. Typically the boat would be leased by the week. The trips would initiate from Lovell Docks, in Fort Lauderdale, FL and cruise up and down the intracoastal for the day trips, and to the Bahamas, the Florida Keys and various other locations on the Eastern Coast of Florida for the overnight or extended charter trips."

Geographic Region: "Florida."

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 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: March 3, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–5746 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2011 0025]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMAZING GRACE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0025 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 13, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0025. Written comments may be submitted by hand or by mail to the Docket Clerk,

U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AMAZING GRACE is:

Intended Commercial Use of Vessel: "Skippered sailboat charters consisting of six passengers or less."

Geographic Region: "California."

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 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: March 3, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–5742 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2011 0023]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TASI.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0023 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 13, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0023. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TASI is:

Intended Commercial Use of Vessel: "I intend to use vessel for 6 passenger day sail type of charters."

Geographic Region: "Oregon and Washington."

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 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: March 3, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–5743 Filed 3–11–11; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL REGISTER

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Part II

Postal Service

39 CFR Part 111
New Origin Entry Separation & Containerization Standards; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

New Origin Entry Separation & Containerization Standards

AGENCY: Postal Service ™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to change the preparation requirements for mail entered at origin, either as an entire mailing or as the residual volume for plant verified drop shipment (PVDS) mailings.

DATES: We must receive your comments on or before April 13, 2011.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 4446, Washington DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments concerning the proposed rule, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of "New Origin Entry Standards." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Karen McManus at 202–268–4005 or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: On December 20, 2006, the Postal Accountability Enhancement Act was signed into law. A provision of the law required the Postal Service to establish modern service standards, measure service performance against these standards and publish the results. In recognition of this goal, the Postal Service consulted with the Postal Regulatory Commission (PRC) and worked closely with mailer groups and other mailing industry representatives to develop standards and measurement processes. During these discussions, various strategies and suggestions were offered to help improve service provided to commercial mailings entered at origin. Modern service standards resulting from these consultations were announced 12 months after the bill was signed into law and are expected to improve efficiency and service and to coordinate the preparation and entry of mail with changes in the USPS distribution network. For more information see **Federal Register** final rule, *Modern Service Standards for Market Dominant Products,* published December 19, 2007 (72 FR 72216–72231).

In May 2009, the Postal Service began transforming its distribution network by converting Bulk Mail Centers into Network Distribution Centers. The realignment permitted the consolidation of transportation and created new work flows to facilitate movement of mail through the network. The redesign of the network necessitates some adjustments to internal USPS work methods as well as modifications to the preparation of origin-entered commercial mail to align with the new transportation flows and work processes. The proper preparation of origin-entered mailings will allow the Postal Service to eliminate unnecessary processing at the local plant and will facilitate the transportation of these mailings within its network. Working with various segments of the mailing industry, the Postal Service has developed and is proposing new preparation standards that align with the revised network and a corresponding communications program to relate these changes to the mailing industry. The following proposal is the result of these efforts.

Separation of Residual Mail Entered at Origin

This proposed rule applies to origin-entered commercial mail only, and may apply to entire mailings or to the residual portion of a plant verified PVDS mailing not being dropshipped to a destination. Existing presort requirements for mailings and the number of pieces required per presort level will remain the same. Except as defined below, all handling unit separations currently required will also remain unchanged. For the purpose of this proposal, a handling unit is defined as the mail transport equipment used to carry an aggregate of mailpieces sorted to a specific price level for a presort destination, and would include letter trays, flat trays (tubs), sacks, bundles and packages. A container is defined as the equipment used to transport handling units, and would include pallets, all purpose containers (APC) and hampers. In certain circumstances involving low volume mailings, or mail that can not be palletized, containers may also include flat trays.

Under this proposal, after all required handling units and containers have been prepared, mailers must separate the remaining mail (or residue from a PVDS mailing) as follows:

Standard Mail and Package Services:

Origin Network Distribution Center: Required for letters, flats and parcels. For bundles of flats or parcels, do not sack prior to containerizing the mail. Separate all handling units destinating in the service area of the origin Network Distribution Center (NDC) from the rest of the mailing. Use column A of Labeling List L601 (L604 for Standard Mail letters and flats) to determine the ZIP Codes in the service area of the NDC. Handling units must be placed in containers. Prepare container (pallet) placards using the column B "Label to" information in L601 (column C "Label to" information in L604 for Standard Mail letters and flats). There is no minimum load threshold for this separation.

Tier Two Network: Required for letters, flats and parcels. For bundles of flats or parcels, do not sack prior to containerizing the mail. Place any remaining handling units on a second container, or when applicable, separate as follows. Prepare container (pallet) placards using the column C "Label to" information in L604 (L603 for parcels). When the origin NDC is Chicago, Cincinnati, St. Louis or San Francisco, use Labeling List L604 (L603 for parcels) to separate the remaining mail into two directionally-based containers which will route residue mail either east or west (Chicago, Cincinnati or Saint Louis) or north or south (San Francisco) as needed from origin. Prepare container placards using the column C "Label to" information in L604 or L603. There is no minimum load threshold for this separation.

Periodicals

Local Surface Transport: Required for letters, flats and parcels. For bundles of flats or parcels, do not sack prior to palletizing the mail. Separate all handling units destinating in the surface transportation network area of the origin entry site from the rest of the mailing. Use column B of Labeling List L201 to determine the ZIP Codes in the surface transportation area of the origin site. Handling units must be placed in containers. Prepare container (pallet) placards using the column C "Label to" information in L201. There is no minimum load threshold for this separation.

Extended Surface Network: Required for letters, flats and parcels. For bundles of flats or parcels, do not sack prior to containerizing the mail. Place any remaining handling units on a second container. Use column A of Labeling List L009 to determine the location for Periodicals piece processing based on the origin entry point. Prepare container (pallet) placards using the column B

"Label to" information in L009. There is no minimum load threshold for this separation.

Palletization Required When Possible

Current standards for containerization of nonpalletized mailings are determined by mailpiece shape. Letters are placed in trays, flats are bundled and placed in sacks or flat trays (tubs) or placed loose in flat trays and parcels are bedloaded or placed in sacks.

Under these proposed standards, trays, bundles or parcels that cannot be prepared on a direct pallet must be placed on the appropriate pallet for the *Origin NDC, Local Surface Transport, Tier Two Network* or *Extended Surface Network,* when the volume reaches one hundred and fifty (150) pounds or 36 linear feet of trays for each pallet. Mailers may optionally make pallets with less than 150 pounds, or 36 linear feet of trays, for these separations. Mailers choosing not to make pallets weighing less than 150 pounds, or who are unable to palletize, must prepare bundles in flat trays or approved alternate containers in accordance with applicable preparation standards.

The Postal Service does not currently provide a container price applicable to Periodicals bundles placed directly on mixed ADC pallets or equivalent containers. The Postal Service is currently considering this matter and expects to introduce a price for mixed ADC containers as a separate initiative prior to the implementation of the final standards.

These new proposed requirements will apply to all origin or destination entered mailings. For mailers who are unable to palletize flats or parcels, the Postal Service proposes to require the use of flat trays (tubs) or approved alternate containers when performing the separations described in this proposed rule or under current DMM standards. The use of flat trays (tubs) or alternate containers will afford mailers more flexibility in how mail is presented at origin or destination entry points. Alternatives to the use of flat trays may be approved by the local plant manager or designee.

Mailers of flats, or parcels presorted to a 3-digit ZIP Code or less finely, who do not palletize must use flat trays (tubs) in lieu of sacking. Flat trays must also be used for all presort levels (except 5-digit, 5-digit scheme and carrier route separations of parcels) being deposited at origin or destination entry points. Lids will not be required on origin entry 3-digit and SCF, origin NDC, tier 2 network, local surface transport and extended surface network flat trays only. These proposed preparation standards will provide for a reduction of sack handling and the expedited processing of individual pieces, and will result in increased efficiencies and improved service.

Optional Requirement—Origin SCF Separation

For the purpose of this proposed rule, *separation* means the creation of an additional container of residual mailpieces, after all other required separations have been made, for the origin sectional center facility (SCF) or for each of the 3-digit ZIP Codes of the origin SCF. Current standards require mailers of commercial First-Class Mail® and Periodicals letters and flats to separately prepare trays or bundles for mailpieces destinating within the SCF servicing the facility where the mail is verified (origin). Origin SCF (or origin 3-digit) separations are optional for other mail classes and shapes. The Postal Service proposes to extend the option for mailers to make such origin SCF separations for all classes and shapes of mailpieces.

In this proposal *segregation* means physical removal of the separated containers from the remainder of the mailing and separately placing them into transport units, placing them in a conspicuous location on top of the origin SCF pallet, or otherwise presenting them separately to USPS acceptance personnel. In order to improve the identification and processing of these mailpieces, the Postal Service is proposing to require mailers of all commercial mail (letters, flats and parcels) to segregate origin SCF separations (and finer sortation levels) containers, bundles or parcels from the remainder of the mailing. This requirement will apply to all required separations and to all optional separations (whenever the mailer chooses to make that separation). This new requirement should improve service by preventing mailpieces for the processing plant's service area from being transported to another processing facility prior to delivery.

Other Proposed Mail Preparation Changes

There are no current mail preparation standards pertaining to barcoded tray labels for Library Mail and Media Mail. This proposed rule will establish such standards. We have eliminated standards for the use of 1-inch sack labels for all types of mail. These labels are no longer supported by USPS Engineering, their use in the field should be limited, and equipment compatible with the use of 2-inch labels is widely available. We are also proposing to revise language in DMM 705.10.1 to align with other standards that specify that nonmachinable flat-size Periodicals prepared under 707.26 cannot be merged with machinable flats. We also are eliminating the option for mailers to place mixed ADC or mixed AADC bundles, sacks or trays on auxiliary service facility (ASF) or NDC pallets. Changes in processing at these facilities no longer make this option practical.

Although the Postal Service is exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553(b), (c)) regarding proposed rulemaking by operation of 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

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

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

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

* * * * *

200 Commercial Mail Letters and Cards

* * * * *

230 First-Class Mail

* * * * *

235 Mail Preparation

* * * * *

3.0 Letter Trays

* * * * *

3.3 Letter Tray Preparation

Letter trays are prepared as follows:

* * * * *

[Revise the last sentence of 3.3c as follows:]

c. * * * Except for 3-digit/scheme trays destined within the origin/entry SCF, mailers may optionally move any pieces remaining to the next higher

presort level at which there is a minimum quantity (*e.g.,* 150 pieces).

* * * * *

[Delete 3.6, Origin/Entry 3_Digit/ Scheme Trays, in its entirety.]

* * * * *

5.0 Preparing Nonautomation Letters

* * * * *

5.2 Machinable Preparation

* * * * *

5.2.2 Traying and Labeling

[Revise the introductory paragraph of 5.2.2 as follows:]

Mailers must segregate trays destined within the origin/entry SCF under 236.1.5. Preparation sequence, tray size, and labeling:

[Revise 5.2.2a as follows:]

a. Origin/entry 3-digit/scheme (required); separate trays required for each 3-digit/scheme ZIP Code within the origin/entry SCF; no minimum piece requirement; one less-than-full tray permitted for each 3-digit/scheme; labeling:

1. Line 1: L002, Column B.

2. Line 2: "FCM LTR 3D MACH."

* * * * *

5.3 Nonmachinable Preparation

* * * * *

5.3.2 Traying and Labeling

[Revise the introductory paragraph of 5.3.2 as follows:]

Mailers must segregate trays destined within the origin/entry SCF under 236.1.5. Preparation sequence, tray size, and labeling:

* * * * *

[Resequence current items 5.3.2b through d as the new c through e, and add a new item b as follows:]

b. Origin/entry 3-digit; required; no minimum piece requirement; one less-than-full tray for each origin/entry 3-digit; labeling:

1. Line 1: L002, Column A.

2. Line 2: "FCM LTR 3D MANUAL."

[Revise the opening sentence only of resequenced 5.3.2c as follows:]

c. 3-digit (required); full trays (no overflow); labeling:

* * * * *

6.0 Preparing Automation Letters

* * * * *

6.6 Tray Preparation

[Revise the introductory paragraph of 6.6 as follows:]

Except for origin/entry 3-digit/scheme trays, mailers may place fewer than 150 overflow pieces in the next tray level when a tray of 150 or more pieces can be made. Mailers must segregate trays destined within the origin/entry SCF under 236.1.5. Mailers must note these trays on standardized documentation (*see* 708.1.2). Pieces placed in the next tray level must be grouped by destination and placed in the front or back of that tray. Mailers may use this option selectively for 3-digit and AADC ZIP Codes. Preparation sequence and Line 1 labeling:

[Revise item 6.6a as follows:]

a. 5-digit/scheme (see 1.4e): optional, but required for 5-digit price (150-piece minimum); overflow allowed; when making these separations.

1. For 5-digit scheme trays, use destination shown in the current USPS City State Product.

2. For 5-digit trays, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

[Resequence current items 6.6b through d as the new c through e, and add a new item b as follows:]

b. Origin/entry 3-digit; required; separate trays required for each origin 3-digit/scheme, no minimum; one less-than-full tray allowed for each 3-digit/scheme; for Line 1, use L002, Column B.

[Revise resequenced 6.6c as follows:]

c. 3-digit/scheme: Optional, but required for 3-digit price (150-piece minimum); overflow allowed; for Line 1, use L002, Column B.

* * * * *

6.8 Presentation

[Revise 6.8 as follows:]

Mailers must present all mixed AADC trays together when presenting mailings for USPS verification. Mixed AADC trays must either be adjacent to one another, and must be placed as the top layer(s) on any container; or may be placed immediately below origin/entry 5-digit or 3-digit/scheme trays, when segregated under 236.1.5. Containerization instructions for First-Class Mail letters and cards may be established by local USPS managers.

236 Enter and Deposit

1.0 Deposit

* * * * *

[Add a new 1.5 as follows:]

1.5 Segregation of Trays for the Origin/Entry SCF

Mailers must make all required, and may make any optional, origin/entry 3-digit (scheme) and origin/entry 5-digit (scheme) separations destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations mailpieces must be trayed in accordance with 235.0 and segregated from the remainder of the mailing by one of these methods: Separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

* * * * *

240 Standard Mail

* * * * *

245 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

[Add a new 1.5 to reference required palletization as follows:]

1.5 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have at least 72 linear feet of trays to a presort destination. If a mailer is unable to palletize, mail must be separated and placed in approved alternate containers.

* * * * *

3.0 Letter Trays

* * * * *

3.3 Letter Tray Preparation

Letter trays are prepared as follows:

* * * * *

[Revise the third sentence of 3.3c as follows:]

c. * * * Except for 3-digit/scheme trays destined within the origin/entry SCF, mailers may optionally move any pieces remaining to the next higher presort level at which there is a minimum quantity (*e.g.,* 150 pieces).

* * * * *

[Delete 3.6, Origin/Entry 3-Digit/ Scheme Tray, in its entirety.]

* * * * *

5.0 Preparing Nonautomation Letters

* * * * *

5.3 Machinable Preparation

* * * * *

5.3.2 Traying and Labeling

[Revise the introductory paragraph of 5.3.2 by adding a new second sentence as follows:]

* * * Mailers must segregate trays destined within the origin/entry SCF under 246.1.3. * * *

* * * * *

5.4 Nonmachinable Preparation

* * * * *

5.4.2 Traying and Labeling

[Revise the introductory sentence of 5.4.2 as follows:]

Overflow trays are not allowed. Mailers must segregate trays destined within the origin/entry SCF under 246.1.3. Preparation sequence, tray size, and labeling:

* * * * *

[*Resequence current items 5.4.2b through d as the new c through e and add new item b as follows:]*

b. Origin/entry 3-digit (optional); separate trays required for each origin 3-digit ZIP Code; no minimum piece requirement; one less-than-full tray for each origin/entry 3-digit; when making these separations; labeling:

1. Line 1: L002, Column A.

2. Line 2: "STD LTR 3D MANUAL."

[Revise resequenced 5.4.2c as follows:]

c. 3-digit (required); 150-piece minimum; labeling:

1. Line 1: L002, Column A.

2. Line 2: "STD LTR 3D MANUAL."

* * * * *

6.0 Preparing Enhanced Carrier Route Letters

* * * * *

6.6 General Traying and Labeling

[Revise the introductory paragraph of 6.6 as follows:]

For all mailings containing any ECR letters over 3 ounces and all mailings of nonautomation ECR letters, prepare trays as explained below. Mailers must segregate trays destined within the origin/entry SCF under 246.1.3. Prepare letters with simplified addresses in separate trays from pieces with other forms of addressing. For ECR barcoded automation-compatible letters that weigh up to 3 ounces, prepare trays under 6.7. Preparation sequence, tray size, and labeling:

[Revise the opening paragraphs only of items 6.6a through c as follows:]

a. Carrier route: Required; full trays only, no overflow.

* * * * *

b. 5-digit carrier routes: Required if full tray, optional with minimum one 10-piece bundle.

* * * * *

c. 3-digit carrier routes: Optional with minimum one 10-piece bundle for each of two or more 5-digit areas.

* * * * *

6.7 Traying and Labeling for Automation-Compatible ECR Letters

[Add a new seventh sentence to the introductory paragraph of 6.7 as follows:]

* * * Mailers must segregate trays destined within the origin/entry SCF under 246.1.3. * * *

* * * * *

7.0 Preparing Automation Letters

* * * * *

7.5 Tray Preparation

[Revise the introductory text of 7.5 as follows:]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in an existing qualified tray of at least 150 or more pieces at the next tray level. (For example, 30 overflow 5-digit pieces for 20260 may be added to a qualified 3-digit tray (prefix 202) and the overflow 5-digit pieces will qualify for the 5-digit price.) Pieces that are placed in the next tray level must be grouped by destination and placed in the front or back of that tray. This option does not apply to origin/entry 3-digit/scheme trays. When making 5-digit/scheme and origin 3-digit/scheme trays, mailers must segregate trays destined within the origin/entry SCF as described in 246.1.3 Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[Resequence current items 7.5b through d as the new c through e, and add new item b as follows:]

b. Origin 3-digit/scheme; optional; separate trays required for each origin 3-digit/scheme; no minimum piece requirement; one less-than-full tray for each origin/entry 3-digit; for Line 1, use L002, Column B.

[Revise resequenced 7.5c as follows:]

c. 3-digit/scheme; optional, but required for 3-digit price (150-piece minimum); overflow allowed; for Line 1, use L002, Column B.

* * * * *

7.7 Presentation

[Revise 7.7 as follows:]

Mailers must present all mixed AADC trays together for USPS verification, placed as the top layer(s) on any given container, or immediately below origin/entry carrier route, 5-digit/scheme or 3-digit/scheme trays, when segregated under 246.1.3.

* * * * *

246 Enter and Deposit

1.0 Presenting a Mailing

* * * * *

[Add a new 1.3 as follows:]

1.3 Segregation of Origin SCF Trays

Mailers must make all required, and may make any optional, origin/entry carrier routes, 5-digit (scheme) and 3-digit (scheme) separations destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all origin/entry separations made, mailpieces must be trayed under 245.3.0 and segregated from the remainder of the mailing by one of these methods: separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

* * * * *

300 Commercial Flats

* * * * *

330 First-Class Mail

* * * * *

335 Mail Preparation

* * * * *

3.0 Flat Trays

* * * * *

[Delete 3.6, Origin/Entry 3–Digit/Scheme Trays, in its entirety.]

* * * * *

5.0 Preparation of Nonautomation Flats

* * * * *

5.5 Traying and Labeling

[Revise the introductory paragraph of 5.5 as follows:]

Mailers must segregate trays destined within the origin/entry SCF under 336.1.5. Preparation sequence and labeling:

* * * * *

[Resequence current items 5.5 b through d as the new c through e, and add a new item b as follows:

b. Origin/entry 3-digit (required); separate trays required for each origin 3-digit ZIP Code; no minimum piece requirement; one less-than-full tray for each origin/entry 3-digit; mailers must segregate trays destined within the origin/entry SCF under 336.1.5; labeling:

1. Line 1: L002, Column A.

2. Line 2: "FCM FLTS 3D NON BC."

[Revise the opening paragraph of resequenced 5.5c as follows:]

c. 3-digit (required); full trays (no overflow); labeling:

* * * * *

6.0 Preparation of Automation Flats

* * * * *

6.5 First-Class Mail Required Bundle-Based Preparation

* * * * *

6.5.2 Traying and Labeling

[Revise the introductory paragraph of 6.5.2 as follows:]

Mailers must segregate trays destined within the origin/entry SCF under

336.1.5. Preparation sequence and labeling:

* * * * *

6.6 First-Class Mail Optional Tray-Based Preparation

[Revise the opening paragraph of 6.6 as follows:]

Mailers must segregate trays destined within the origin/entry SCF under 336.1.5. Preparation, sequence, and Line 1 labeling:

* * * * *

336 Enter and Deposit

1.0 Deposit

* * * * *

[Revise 1.0 by adding a new 1.5 as follows:]

1.5 Segregation of Origin SCF Trays

Mailers must make all required, and may make any optional, origin/entry 3-digit (scheme) and origin/entry 5-digit (scheme) separations destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations, mailpieces must be trayed or placed in alternate containers under 335.0 and segregated from the remainder of the mailing by one of these methods: separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

* * * * *

340 Standard Mail

343 Prices and Eligibility

* * * * *

5.0 Additional Eligibility Standards for Nonautomation Standard Mail Flats

* * * * *

5.3 5-Digit Prices for Flats

The 5-digit price applies to flat-size pieces:

[Revise 5.3a as follows:]

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable; placed in a 5-digit/scheme flat tray or approved alternate container containing at least 125 pieces or 15 pounds of pieces. Eligibility is also met by placing at least 125 pieces or 15 pounds per destination in more than one flat tray when the flat trays are full, according to 345.1.4e.

* * * * *

[Revise 5.3c as follows:]

c. In a 5-digit bundle of 10 or more pieces, or 15 or more pieces, as applicable; placed in a merged 5-digit/scheme or 5-digit flat tray or approved alternate container under 705.10.0.

5.4 3-Digit Prices for Flats

The 3-digit price applies to flat-size pieces:

[Revise 5.4a as follows:]

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable, or in a 3-digit/scheme bundle of 10 or more pieces; placed in a 3-digit flat tray or approved alternate container of at least 125 pieces or 15 pounds of pieces. Eligibility is also met by placing at least 125 pieces or 15 pounds per destination in more than one flat tray when the flat trays are full, according to 345.1.4e.

* * * * *

5.5 ADC Prices for Flats

ADC prices apply to flat-size pieces:

[Revise items 5.5a and b as follows:]

a. In a 5-digit/scheme, 3-digit/scheme, or ADC bundle of 10 or more pieces placed in an ADC flat tray or approved alternate container of at least 125 pieces or 15 pounds of pieces. Eligibility is also met by placing at least 125 pieces or 15 pounds per destination in more than one flat tray when the flat trays are full, according to 345.1.4e.

b. In a 3-digit/scheme origin/entry flat tray or approved alternate container.

* * * * *

5.6 Mixed ADC Prices for Flats

[Revise 5.6 as follows:]

Mixed ADC prices apply to flat-size pieces in bundles that do not qualify for 5-digit, 3-digit, or ADC prices.

* * * * *

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Flats

* * * * *

6.3 Basic Price Enhanced Carrier Route Standards

* * * * *

6.3.2 Basic Price Eligibility

Basic prices apply to each piece in a carrier route bundle of 10 or more pieces that is:

* * * * *

[Revise items 6.3.2b through d as follows:]

b. Placed in a carrier route flat tray or approved alternate container containing at least 125 pieces or 15 pounds of pieces. Eligibility is also met by placing at least 125 pieces or 15 pounds per destination in more than one flat tray when the flat trays are full, according to 345.1.4e.

c. Placed in a merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, or 5-digit carrier routes flat trays or approved alternate containers.

d. Entered at a destination delivery unit as untrayed or uncontainerized bundles, under 345.2.0 and 346.5.0.

* * * * *

6.4 High Density Enhanced Carrier Route Standards

* * * * *

6.4.2 High Density Prices for Flats

High density prices apply to each piece in a carrier route bundle of 10 or more pieces that is:

* * * * *

[Revise items 6.4.2b and c as follows:]

b. Placed in a carrier route flat tray or approved alternate container containing at least 125 pieces or 15 pounds of pieces. Eligibility is also met by placing at least 125 pieces or 15 pounds per destination in more than one flat tray when the flat trays are full, according to 345.1.4e.

c. Placed in a merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, or 5-digit carrier routes flat tray or approved alternate container.

* * * * *

6.5 Saturation Enhanced Carrier Route Standards

* * * * *

6.5.2 Saturation Prices for Flats

Saturation prices apply to each piece in a carrier route bundle of 10 or more pieces that is:

* * * * *

[Revise items 6.5.2b and c as follows:]

b. Placed in a carrier route flat tray or approved alternate container containing at least 125 pieces or 15 pounds of pieces. Eligibility is also met by placing at least 125 pieces or 15 pounds per destination in more than one flat tray when the flat trays are full, according to 345.1.4e.

c. Placed in a merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, or 5-digit carrier routes flat tray or approved alternate container.

* * * * *

345 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise items 1.3c through 1.3h as follows:]

c. *5-digit scheme* (bundles, flat trays or approved alternate containers) for

flats meeting the automation standards in 301.3.0: The delivery ZIP Code on all pieces is one of the 5-digit ZIP Code areas in as a single scheme, as shown in L007.

d. *5-digit scheme carrier routes* (pallets, flat trays or approved alternate containers) for Standard Mail flats: The delivery ZIP Code on all pieces in carrier route bundles is one of the 5-digit ZIP Codes processed by the USPS as a single scheme, as shown in L001.

e. *Merged 5-digit trays:* The carrier route bundles and 5-digit bundles, in a flat tray or approved alternate container, are all for a 5-digit ZIP Code that has an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product.

f. *Merged 5-digit pallet:* Contains carrier route bundles and noncarrier route 5-digit bundles.

g. *Merged 5-digit scheme trays:* The 5-digit ZIP Codes on pieces in carrier route bundles and 5-digit bundles in a flat tray or approved alternate container are all for 5-digit ZIP Codes that are part of a single scheme as shown in L001, and the 5-digit bundles also are for 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product.

h. *Merged 5-digit scheme pallet:* Contains carrier route bundles and noncarrier route bundles for those 5-digit ZIP Codes that are part of a single scheme under L001.

* * * * *

[Revise the second sentence of 1.3k as follows:]

k. * * * These separations are optional, but mailers making these separations must segregate trays for each 3-digit area under 346.1.3.

* * * * *

[Revise 1.3m as follows:]

m. Origin/entry SCF: The separation includes bundles for one or more 3-digit areas served by the same sectional center facility (SCF) (see L005) in whose service area the mail is verified/entered. Mailpieces may be separated for each such 3-digit area regardless of the volume of mail. Mailers making these separations must segregate trays, approved alternate containers or pallets from the remainder of the mailing under 346.1.3.

* * * * *

[Revise 1.3q as follows:]

q. Residual pieces/bundles/trays/alternate containers: Contain mail remaining after completion of a presort sequence. Residual mail lacks the volume for preparation to a particular destination.

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Delete current items 1.4e through t in their entirety and replace with new e through u as follows:]

e. A *full flat tray* is one that is physically full. Although a specific minimum volume of at least one stack of mail lying flat on the bottom of the tray and filling the tray to the bottom of the handholds is required for a tray prepared to a presort destination, trays must be filled with additional available pieces (up to the reasonable capacity of the tray) when standards require full trays.

f. A *less-than-full flat tray* is one that contains flats for the same destination regardless of quantity or whether a full tray was also prepared for that destination.

g. An *approved alternate container* is a container authorized by the USPS instead of a flat tray (tub) or pallet, for the handling and transport of bundled flat-size mailpieces or parcels. Alternate containers could include sacks, other USPS mail transport equipment, or mailer-supplied containers.

h. *A 5-digit scheme sort* for flats meeting the standards in 301.3.0 is defined in 1.3c. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles, flat trays or approved alternate containers, then prepare all possible 5-digit bundles, flat trays or alternate containers. Label bundles using an optional endorsement line (OEL) under 708.7.0 or with a red "5 SCH" bundle label. Place bundles in appropriate containers using the OEL "label to" 5-digit ZIP Code or using L007 column B.

i. A *5-digit scheme carrier routes sort* is defined in 1.3d. Flat trays, alternate containers or pallets labeled to a 5-digit scheme carrier routes destination that contain bundles for only one of the 5-digit areas are considered to be sorted to 5-digit scheme carrier routes. Preparation of 5-digit scheme carrier routes trays or pallets must be done for all 5-digit scheme destinations.

j. *A merged 5-digit sort is an optional sort for Standard Mail flats in flat trays or alternate containers* and is defined in 1.3e. If preparation of merged 5-digit trays is performed, it must be done for all 5-digit ZIP Code destinations with an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product.

k. The *merged 5-digit sort* is optional for bundles of Standard Mail flats prepared on pallets under 705.10 and is defined in 1.3f. Pallets labeled to a merged 5-digit destination that contain only a single price level of bundle(s) are considered to be merged 5-digit sorted.

l. *A merged 5-digit scheme sort for Standard Mail flats prepared in flat trays or approved alternate containers* under 705.10.0 is defined in 1.3g. Trays or alternate containers labeled to a merged 5-digit scheme destination that contain only a single price level of bundle(s) or bundles for only one of the schemed 5-digit ZIP Codes are considered to be merged 5-digit scheme sorted.

m. *A merged 5-digit scheme sort for bundles of Standard Mail flats on pallets* under 705.8.0, 705.10.0, 705.12.0, or 705.13.0 is defined in 1.3h. Pallets labeled to a merged 5-digit scheme destination that contain only a single price level of bundle(s) or bundles for only one of the 5-digit ZIP Codes are considered to be merged 5-digit sorted. If preparation of merged 5-digit scheme pallets is performed, it must be done for all 5-digit scheme destinations in L001.

n. *A 3-digit scheme sort* for bundles of flats meeting the standards in 301.3.0 is defined in 1.3j. When standards require 3-digit/scheme sort for flats, mailers must prepare all possible 3-digit scheme bundles of flats, then prepare all possible 3-digit bundles. Label bundles using an optional endorsement line (OEL) under 708.7.0 or with a green "3SCH" bundle label. Place bundles in appropriate containers using the OEL "label to" 3-digit ZIP Code or using L008 column B.

o. An *origin 3-digit (or origin 3-digit scheme)* tray contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF in whose service area the mail is verified. A separate tray may be prepared for each 3-digit ZIP Code (or 3-digit scheme) area.

p. The *required at* [quantity] instruction means that the particular unit must be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded, up to the maximum size or weight.

q. The *optional at* [quantity] instruction means that the particular unit may be prepared for the corresponding presort level whenever the specified quantity is reached or exceeded, up to the maximum size or weight.

r. *Entry* [facility] (or *origin* [facility]) refers to the USPS mail processing facility (*e.g.,* "entry NDC") that serves the Post Office at which the mail is entered by the mailer. If the Post Office where the mail is entered is not the one

serving the mailer's location (*e.g.,* for plant-verified drop shipment), the Post Office of entry determines the entry facility. Entry SCF includes both single-3-digit and multi-3-digit SCFs. Entry NDC includes subordinate ASFs unless otherwise specified.

s. A *bundle* is a group of addressed pieces secured together as a unit. Bundle preparation is described in 2.0.

t. A "*logical*" presort destination represents the total number of pieces that are eligible for a specific presort level but which might not be contained in a single bundle or in a single flat tray, approved alternate container or pallet due to preparation requirements or the size of the individual pieces. For example, there may be 42 mailpieces for ZIP Code 43112 forming a "logical" 5-digit bundle, and the pieces are prepared in three physical 5-digit bundles.

u. *Cobundling* is an alternate preparation method available under 705.11.0 for Standard Mail that allows the combining of flat-size automation price and Presorted price pieces within the same bundle under the single minimum bundle size requirement. Regardless of the class of mail, pieces may not be combined in more than one physical bundle for each logical presort destination unless presented using an approved manifest mailing system under 705.2.0.

[Revise title and text of 1.5 as follows:]

1.5 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have reached the minimum loads described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in flat trays or approved alternate containers.

* * * * *

2.0 Bundles

* * * * *

2.2 Address Visibility

* * * This standard does not apply to the following:

* * * * *

[Revise items 2.2b and c as follows:]

b. Bundles placed in or on 5-digit or 5-digit scheme (L001) flat trays, alternate containers or pallets.

c. Bundles placed in carrier route(s) flat trays or alternate containers.

* * * * *

[Revise title of 2.6 and text of the introductory sentence as follows:]

2.6 Preparing Bundles in Flat Trays or Alternate Containers

In addition to the standards in 2.5, mailers must prepare bundles in flat trays or approved alternate containers as follows:

* * * * *

[Revise title and introductory sentence only of 2.7 as follows:]

2.7 Additional Standards for Untrayed Bundles Entered at DDU Facilities

Mailers may enter untrayed, nonpalletized bundles of flat-size pieces at destination delivery units (DDUs) if all the following conditions are met:

* * * * *

2.9 Pieces With Simplified Address

[Revise the last sentence of 2.9 as follows:]

* * * Bundles must be secure and stable subject to weight limits in 705.8.0 if placed on pallets, and other limits in 2.6 if placed in trays or alternate containers.

* * * * *

[Revise title of 3.0 as follows:]

3.0 Trays and Alternate Containers

3.1 Standard Containers

[Revise the first sentence of the introductory paragraph of 3.1 as follows:]

If mailers are unable to palletize, mailings must be prepared in flat trays or approved alternate containers except as permitted in letter trays under 3.4 and under other standards in this section. * * *

* * * * *

[Revise title and text of 3.2 as follows:]

3.2 Tray Preparation

Tray and alternate container preparation is subject to these standards:

a. Each tray or alternate container must bear the correct tray label.

b. The weight of a tray, or alternate container, and its content must not exceed 70 pounds.

* * * * *

3.4 Preparing Flats in Letter Trays

[Revise the introductory paragraph of 3.4f as follows:]

Standard Mail flat-size pieces may be prepared in letter trays instead of flat trays only if the following standards are met:

* * * * *

[Revise 3.4f as follows:]

f. All pieces in the mailing must be placed in letter trays on pallets, separated by presort destination when the required minimum pallet load in 705.8.5.3 cannot be met.

* * * * *

[Delete 3.6, Strapping Exception, in its entirety.]

* * * * *

[Revise title of 4.0 as follows:]

4.0 Tray Labels

4.1 Basic Standards

[Revise 4.1 as follows:]

Tray labels are subject to the following:

a. Labels for flat trays or approved alternate containers for automation mailings are subject to 4.9 and 708.6.5.

b. Only legible labels, including hand written labels, are acceptable. Machine-printed labels (available from the USPS) ensure legibility.

c. Intelligent Mail tray labels are subject to the standards in 708.6.5 and to the specifications posted at http://ribbs.usps.gov.

* * * * *

[Delete 4.7, Sack Label, in its entirety, and renumber current items 4.8 and 4.9 as the new 4.7 and 4.8.]

* * * * *

[Revise the title of renumbered 4.8 and text of the introductory sentence only as follows:]

4.8 Use of Barcoded Tray Labels

Exhibit 4.8 shows the types of mail requiring barcoded tray labels. Barcoded labels must meet these general standards:

* * * * *

[Revise renumbered items 4.8d and e as follows:]

d. Mailers must insert a barcoded label completely into the label holder on the tray or alternate container.

e. Intelligent Mail tray labels must be used on all trays and alternate container for mailings entered under the full-service Intelligent Mail automation option.

Exhibit 4.9 Required Barcoded Container Labels

[Revise the "price or type" description in the second row of Exhibit 4.9 to replace the word "cosacked" with "cotrayed" under Standard Mail as follows:]

PRICE OR TYPE

Standard Mail

* * * * *

Cobundled and Cotrayed Under 705.9.0 Through 705.13.0

* * * * *

5.0 Preparing Nonautomation Flats

5.1 Basic Standards

* * * * *

b. All pieces must meet the applicable general preparation standards in 1.0 through 4.0 and the following:

* * * * *

[Revise 5.1b2 as follows:]

2. All pieces must be in the flat-size processing category and must be bundled and placed on pallets, or bundled and placed in flat trays or approved alternate containers. Certain flat-size pieces may be prepared in letter trays under 3.0.

* * * * *

5.2 Required Bundling

[Revise the first sentence of 5.2 as follows:]

Bundling is required before placing flats on pallets, in flat trays or alternate containers. * * *

* * * * *

[Delete current 5.4, Loose Packing, in its entirety and renumber current items 5.5 through 5.9 as the new 5.4 through 5.8:]

[Revise title of renumbered 5.4 as follows:]

5.4 Required Traying

[Revise the introductory paragraph of renumbered 5.4 as follows:]

If unable to palletize under 705.8.0, or except as provided in 5.5, a tray or alternate container must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

* * * * *

b. For nonidentical-weight pieces, mailers must apply either one of these methods:

* * * * *

[Revise 5.4b2 as follows:]

2. The actual piece count or mail weight for each tray or container is used, if documentation shows the number of pieces and the total weight of pieces in each tray.

* * * * *

[Revise title and introductory sentence of renumbered 5.6 as follows;]

5.6 Traying and Labeling

Mailers must segregate trays destined within the origin/entry SCF under 346.1.3. Preparation sequence and labeling:

* * * * *

[Delete current item 5.6e in its entirety and add new items e through g as follows:]

e. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "STD FLTS NDC NON BC."

f. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "STD FLTS NON BC WKG."

g. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "STD FLTS NON BC WKG."

* * * * *

[Resequence numbered items 5.7 and 5.8 as the new 5.8 and 5.9 and add a new 5.7 as follows:]

5.7 Containerization—Flat Tray Preparation and Labeling

Mailers must prepare bundles on pallets under 705.8.0 when minimum volume is available for a required pallet level. Mailers who are unable to palletize, or mailers of small volume mailings, must prepare bundles in flat trays or approved alternate containers as shown in items a through c. Mailers entering mailings at acceptance locations specified in 5.7d must prepare mailings according to the instructions in d instead of c. Preparation sequence and labeling:

a. *Origin-Entry 3 Digit* (optional); no minimum; when making these separations, mailers must segregate trays as described in 346.1.3; labeling:

1. Line 1: Column A, L002

2. Line 2: "STD FLTS 3D NON BC

b. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD FLTS NON BC."

c. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD FLTS NON BC."

d. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office

2. Line 2: "STD FLTS NON BC."

5.8 Cotraying and Cobundling Flats With Automation Mail

The following standards apply:

* * * * *

[Revise items 5.8b through d as follows:]

b. If the mailing job contains an automation mailing and a nonautomation mailing, it must be prepared under the cotraying standards in 705.9.0.

c. If the mailing job contains a carrier route mailing and a nonautomation mailing, it must be separately trayed under 5.0 and 6.0 or under the merged traying option in 705.10.0.

d. If the mailing job contains a carrier route mailing and an automation mailing, then it must be separately trayed under 6.0 and 7.0 or under the merged traying option in 705.10.0.

* * * * *

5.9 Merged Containerization of Carrier Route, Automation, and Nonautomation Flats

[Revise the first sentence of 5.9 as follows:]

Under the optional preparation in 705.10.0, nonautomation 5-digit bundles prepared under 5.0 are combined in trays or approved alternate containers with carrier route bundles and automation 5-digit bundles in merged 5-digit scheme trays and merged 5-digit trays. * * *

* * * * *

6.0 Preparing Enhanced Carrier Route Flats

6.1 Basic Standards

All mailings and all pieces in each mailing at Enhanced Carrier Route Standard Mail and Nonprofit Enhanced Carrier Route Standard Mail nonautomation prices are subject to specific preparation standards in 6.2 through 6.7 and to these general standards:

* * * * *

c. All pieces must meet the standards in 2.0 through 4.0 and 302, and the following:

* * * * *

[Revise 6.1c2 as follows:]

2. Flat-size pieces must be bundled and placed on pallets under 705.8.0, or if unable to palletize placed into flat trays or alternate containers or, if applicable, in letter trays under 3.4. When entering flat-size pieces at DDUs,

mailers may prepare untrayed, nonpalletized bundles under 2.7.

* * * * *

6.3 Carrier Route Bundle Preparation

Prepare carrier route bundles of flat-size mail as follows:

* * * * *

[Revise 6.3c as follows:]

c. Label carrier route bundles based on the following tray levels:

1. Carrier route tray: No bundle labeling is required.

2. 5-digit scheme or 5-digit carrier routes tray: Bundles must have a facing slip unless the pieces in the bundle have a carrier information line or an optional endorsement line (OEL).

[Revise title and text of 6.4 as follows:]

6.4 Bundles and Trays With Fewer Than the Minimum Number of Pieces Required

As a general exception to 6.2 through 6.7, a mailer may prepare a bundle or tray with fewer than the minimum number of pieces required for a carrier route when pieces meet the saturation standards.

* * * * *

[Revise title and text of the introductory paragraph only of 6.6 as follows:]

6.6 Required Tray Minimums

When traying or containerization is required, mailers must prepare a tray or approved alternate container when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first. The following conditions apply:

* * * * *

[Revise 6.6b as follows:]

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing or tray the pieces according to the actual piece count or mail weight for each tray, if documentation shows the number and total weight in each tray.

* * * * *

[Revise 6.6d as follows:]

d. Trays with fewer than 125 pieces or less than 15 pounds of pieces may be prepared to a carrier route when pieces meet the saturation standards.

* * * * *

[Revise title and introductory paragraph only of 6.7 as follows:]

6.7 Tray Preparation

Mailers must segregate trays destined within the origin/entry SCF under 346.1.3. Preparation sequence and labeling:

* * * * *

6.8 Merged Containerization of Carrier Route, Automation, and Presorted Price Flats

[Revise the first sentence of 6.8 as follows:]

Under the optional preparation in 705.10.0, carrier route bundles are combined in trays or approved alternate containers with 5-digit bundles (both presorted and automation) in merged 5-digit scheme trays and merged 5-digit trays. * * *

* * * * *

7.0 Preparing Automation Flats

7.1 Basic Standards

[Revise the second sentence of 7.1 as follows:]

* * * Trays must bear the appropriate barcoded container labels under 4.9.

* * * * *

7.4 Standard Mail Bundle Preparation

* * * * *

[Revise title of 7.4.2 as follows:]

7.4.2 Required Traying

[Revise the introductory paragraph of 7.4.2 as follows:]

If unable to palletize under 705.8.0, a tray or approved alternate container must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces, whichever occurs first, subject to these conditions:

* * * * *

[Revise 7.4.2b as follows:]

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing or tray by the actual piece count or mail weight for each tray, if documentation shows the number and total weight of pieces in each tray.

* * * * *

[Revise title and text of the introductory paragraph only of 7.4.3 as follows:]

7.4.3 Traying and Labeling

Mailers must segregate trays destined within the origin/entry SCF under 346.1.3. Preparation sequence and labeling:

[Revise the opening paragraph only of 7.4.3 a and c as follows:]

* * * * *

[Delete current 7.4.3e in its entirety and add new items e through g as follows:]

e. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "STD FLTS NDC BC."

f. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "STD FLTS BC WKG."

g. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "STD FLTS BC WKG."

* * * * *

[Renumber current items 7.6 and 7.7 as the new 7.7 and 7.8 and add a new 7.6 as follows:]

7.6 Containerization—Flat Tray Preparation and Labeling

Mailers must prepare bundles on pallets under 705.8.0 when minimum volume is available for a required pallet level. Mailers who are unable to palletize, or mailers of small volume mailings, must prepare bundles in flat trays or approved alternate containers under 7.6a through 7.6c. Mailers entering mailings at acceptance locations specified in item d must prepare mailings according to the instructions in 7.6d instead of c. Preparation sequence and labeling:

a. *Origin-Entry 3 Digit* (optional); no minimum; when making this separation, mailers must segregate trays under 346.1.3; labeling:

1. Line 1: Column A, L002.

2. Line 2: "STD FLTS 3D BC.

b. *Origin Network Distribution Center (NDC);* (required); no minimum; labeling:

1. Line 1: L604, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD FLTS BC WKG."

c. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD FLTS BC WKG."

d. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD FLTS BC WKG."

7.7 Merged Containerization With Presorted and Carrier Route Flats

[Revise renumbered 7.7 as follows:]

When the standards in 705.10.0, 705.12.0, or 705.13.0 are met, 5-digit bundles and carrier route bundles that are part of the same mailing job and mail class may be combined on merged 5-digit scheme trays or pallets and merged 5-digit trays or pallets. Automation flats may be cobundled with nonautomation flats under 705.11.0.

7.8 Exception—Automation and Nonautomation Pieces on Pallets

[Revise the third and fifth sentences of renumbered 7.8 as follows:]

* * * Mailing jobs prepared entirely in trays and claiming this exception must be cobundled under 705.11.0. * * * The nonautomation pieces that cannot be placed on NDC or finer level pallets may be prepared in flat trays and paid at nonautomation flat-size prices.

* * *

* * * * *

346 Enter and Deposit

1.0 Presenting a Mailing

* * * * *

[Add a new 1.3 as follows:]

1.3 Segregation of Origin SCF Mailpieces

Mailers must make all required, and may make any optional, origin/entry carrier route, 5-digit (scheme) carrier route, (merged) 5-digit (scheme) and 3-digit (scheme) separations destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations, mailpieces must be trayed or placed in alternative containers under 345.0 and segregated from the remainder of the mailing. Mailers must segregate the origin/entry trays by one of these methods: Separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

* * * * *

3.0 Destination Network Distribution Center (DNDC) Entry

* * * * *

3.2 Eligibility

[Revise 3.2 as follows:]

Pieces in a correctly prepared Standard Mail mailing that meet the standards in 2.0 and 3.0 are eligible for the DNDC price when they meet all of the following conditions:

a. Pieces are addressed for delivery to one of the 3-digit ZIP Codes served by the NDC or ASF where deposited that are listed in Exhibit 3.1.

b. Pieces are correctly placed on a pallet or in a tray that is labeled to an NDC or ASF, or to a postal facility within the service area of that NDC or ASF (see Exhibit 3.1), and deposited at that NDC or ASF.

c. If bundles of flats on pallets are reallocated from an ASF pallet to a NDC pallet under 705.8.14, mail for the ASF ZIP Codes placed on the NDC pallet is not eligible for the DNDC prices.

3.3 Eligibility for ADC Mailpieces

[Revise the first sentence of 3.3 as follows:]

All pieces in an ADC tray are eligible for the DNDC discount if the ADC facility ZIP Code (as shown on Line 1 of the corresponding container label) is within the service area of the NDC or ASF at which the tray is deposited as shown in Exhibit 3.1. * * *

[Revise title and text of 3.4 as follows:]

3.4 Eligibility for Mixed ADC Bundles or Trays

Mailpieces in a mixed ADC bundle or tray can qualify for the DNDC prices if the following standards are met:

a. All pieces (no minimum) in the bundle or tray must destinate within the ASF or NDC service area shown in Exhibit 3.1.

b. Use labeling list L009 when labeling bundles or trays containing such pieces.

* * * * *

4.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

4.2 Eligibility

Pieces in a mailing that meets the standards in 2.0 and 4.0 are eligible for the DSCF price, as follows:

[Revise items 4.2a and b as follows:]

a. When deposited at a DSCF (or USPS-designated facility), addressed for delivery within that facility's service area, and placed on a pallet or in a tray labeled to that DSCF or to a postal facility within its service area.

b. When prepared in 5-digit bundles and placed on or in a merged 5-digit scheme or merged 5-digit pallet or tray deposited at the destination delivery unit as defined in 5.1.

* * * * *

360 Bound Printed Matter

* * * * *

365 Mail Preparation

1.0 General Information for Mail Presentation

1.1 Basic Preparation—Nonpresorted

[Revise 1.1as follows:]

There are no presort, traying, containerization, or labeling standards for nonpresorted Bound Printed Matter.

* * * * *

1.4 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Renumber current 1.4i through k as the new j through l and add a new item i as follows:]

i. Origin/entry SCF: The separation includes bundles for one or more 3-digit areas served by the same sectional center facility (SCF) (see L005) in whose service area the mail is verified/entered. Mailpieces may be separated for each such 3-digit area regardless of the volume of mail. Mailers making these separations must segregate flat trays, approved alternate containers or pallets labeled to destinations within the origin 3-digit area from the remainder of the mailing as described in 366.2.7.

* * * * *

1.5 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise 1.5b as follows:]

b. *An approved alternate container* is a container that is authorized by the USPS, instead of a flat tray (tub) or pallet. Alternate containers could include sacks, other USPS-supplied mail transport equipment, or mailer-supplied containers.

[Revise the second sentence of 1.5c as follows:]

c. * * * When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and trays or approved authorized containers before preparing 5-digit bundles, and trays or containers. * * *

[Revise item 1.5d as follows:]

d. A *5-digit scheme carrier routes sort* is required for Carrier Route Bound Printed Matter flats prepared in trays, or approved alternate containers, or as bundles on pallets and yields a 5-digit scheme carrier routes trays, alternate containers or pallets for those 5-digit ZIP Codes listed in L001 and 5-digit carrier routes trays, alternate containers or pallets for other areas. The 5-digit ZIP Codes in each scheme are treated as one

presort destination subject to a single minimum tray, alternate container or pallet volume. Trays, alternate containers or pallets prepared for a 5-digit scheme carrier routes destination that contain carrier route bundles for only one of the schemed 5-digit areas are considered to be sorted to 5-digit scheme carrier routes. Preparation of 5-digit scheme carrier routes trays, alternate containers or pallets must be done for all 5-digit scheme destinations.

* * * * *

[Revise 1.5g as follows:]

g. The *required at* [quantity] instruction means that the particular unit must be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded, up to the maximum size or weight.

[Revise 1.5h as follows:]

h. The *optional at* [quantity] instruction means that the particular unit may be prepared for the corresponding presort level whenever the specified quantity is reached or exceeded, up to the maximum size or weight.

* * * * *

[Revise 1.5k as follows:]

k. A "*logical*" *presort destination* represents the total number of pieces that are eligible for a specific presort level based on the required sortation, which might not be contained in one bundle or in one container (tray, alternate container or pallet) due to preparation requirements or the size of the individual pieces. For example, there may be 42 mailpieces for ZIP Code 43112 forming a "logical" 5-digit bundle, and the pieces are prepared in three physical 5-digit bundles.

* * * * *

[Add a new 1.6 as follows:]

1.6 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they reach the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in flat trays or approved alternate containers.

2.0 Bundles

* * * * *

2.2 Address Visibility

* * * This standard does not apply to the following:

[Revise items 2.2a and b as follows:]

a. Bundles placed in or on 5-digit or 5-digit scheme (L001) trays, approved alternate containers or pallets.

b. Bundles placed in carrier route and 5-digit carrier routes trays or approved alternate containers.

* * * * *

2.6 Preparing Bundles

Bundles of flat-size pieces must be secure and stable subject to the following:

* * * * *

[Revise items 2.6b and c as follows:]

b. If placed in trays or approved alternate containers, the applicable weight limits in 5.0 or 6.0.

c. If bundles are prepared as untrayed or uncontainerized bundles under 366.6.2 or 366.6.3, the weight limits and other standards in 2.7.

[Revise title of 2.7 and text of the introductory sentence as follows:]

2.7 Additional Standards for Untrayed Bundles Entered at DDU Facilities

Mailers may enter untrayed or uncontainerized, nonpalletized bundles of flat-size pieces at destination delivery units (DDUs) if all of the following conditions are met:

* * * * *

2.8 Bundle Sizes

[Revise the sixth and seventh sentences of 2.8 as follows:]

* * * Except for mixed ADC bundles and carrier route bundles prepared in trays or approved alternate containers, each physical bundle of Bound Printed Matter must contain at least two pieces. For carrier route Bound Printed Matter prepared in trays or approved alternate containers, the last physical bundle to an individual carrier route may consist of a single addressed piece, provided that all other bundles to that carrier route destination contain at least two addressed pieces, and that the total group of pieces to that carrier route (the logical bundle) meets the carrier route eligibility minimum in 363. * * *

2.9 Pieces With Simplified Addresses

[Revise the last sentence of 2.9 as follows:]

* * * Bundles must be secure and stable subject to weight limits in 705.8.0 if placed on pallets and, for Bound Printed Matter in trays or approved alternate containers, applicable weight limits in 5.0, and 6.0.

* * * * *

[Revise title of 3.0 as follows:]

3.0 Trays and Alternate Containers

[Renumber current 3.1 as the new 3.2 and add a new 3.1 as follows:]

3.1 Standard Containers

If mailers are unable to palletize, mailings must be prepared in flat trays or approved alternate containers.

[Revise title and text of renumbered 3.2 as follows:]

3.2 Tray Preparation

Tray and alternate container preparation is subject to these standards:

a. Each tray or alternate container must bear the correct tray label.

b. The weight of a tray, or alternate container, and its content must not exceed 70 pounds.

[Revise title of 4.0 as follows:]

4.0 Tray Labels

4.1 Basic Standards

[Revise 4.1 as follows:]

Tray labels are subject to the following:

a. Use 2-inch tray labels for trays and approved alternate containers.

b. Labels, including hand-printed labels, must be legible. Machine-printed labels (available from the USPS) ensure legibility.

c. Barcoded tray labels for automation mailings are subject to 4.8 and 708.6.0.

d. Intelligent Mail tray labels, used on trays or alternate containers, are subject to the standards in 708.6.5 and to the specifications posted at *http://ribbs.usps.gov.*

[Revise title and text of the introductory sentence only of 4.2 as follows:]

4.2 Physical Characteristics of a Tray Label

A tray label must meet these specifications:

* * * * *

[Revise 4.2d as follows]

d. Height (perpendicular to printing): 1.860 inches minimum; 2.015 inches maximum.

[Delete current 4.3, Additional Standards for Barcoded Sack Labels, in its entirety and renumber current items 4.4 through 4.9 as new 4.3 through 4.8.]

4.3 Line 1 (Destination Line)

Line 1 (destination line) must meet these standards:

* * * * *

[Revise renumbered 4.3c as follows:]

c. Overseas Military Mail. On 5-digit trays or alternate containers for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range

962–966), followed by the destination 5-digit ZIP Code of the mail in the tray or alternate container.

4.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

[Revise renumbered 4.4a as follows:]

a. Placement: Line 2 must be the second visible line on the label. This line must show the class and processing category of the mail in the tray or alternate container and other information as specified by standards.

* * * * *

[Revise "*code*" *description for nonbarcoded* "*content type*" *(10th in list) in the table under 4.5b as follows:]*

CONTENT TYPE CODE

* * * * *

Nonbarcoded NON BC (trays or alternate containers) NBC (pallets and cotrayed mail under 705.9.0)

* * * * *

[Revise title and introductory paragraph only of renumbered 4.8 as follows:]

4.8 Basic Standards for Barcoded Tray Labels

Mailers must use barcoded tray labels for barcoded flat-size mailings. Barcoded labels must meet these general standards:

* * * * *

[Revise items 4.9d and e as follows:]

d. Mailers must insert a barcoded label completely into the label holder on the tray or alternate container.

e. Intelligent Mail tray labels must be used on all trays and alternate container for mailings entered under the full-service Intelligent Mail automation option.

5.0 Preparing Presorted Flats

* * * * *

5.2 Bundling

5.2.1 Required Bundling

[Revise the first and fourth sentences of 5.2.1 as follows:]

Mailers must bundle pieces before putting them in trays or approved alternate containers. * * * Five-digit bundles placed in 5-digit trays or approved alternate containers and untrayed 5-digit bundles prepared for DDU entry may weigh a maximum of 40 pounds. * * *

* * * * *

[Revise title of 5.3 and 5.3.1 as follows:]

5.3 Traying

5.3.1 Required Traying

[Revise the introductory paragraph of 5.3.1 as follows:]

Mailers must prepare pallets under 705.8 when they reach the minimum load requirements in 705.8.5.3 or prepare flats as untrayed bundles under 2.7. Otherwise, mailers must prepare a tray or approved alternate container when the quantity of mail for a required presort destination reaches either 20 addressed pieces or 20 pounds, whichever occurs first. Only mixed ADC trays or alternate containers may contain smaller volumes. Optional SCF trays or alternate containers are subject to the same minimum piece or pound provision as required trays. Traying or containerization also is subject to these conditions:

* * * * *

[Revise 5.3.1b as follows:]

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing or tray by the actual piece count or mail weight for each tray or alternate container, if documentation can be provided that shows the number of pieces and their total weight in each tray or alternate container.

* * * * *

5.3.2 Separation by Zone

[Revise 5.3.2 as follows:]

Pieces for each zone must be trayed or placed in approved alternate containers separately. When presented for verification, trays or alternate containers must be separated by zone. Exception: Pieces for different zones may be trayed together, and the trays or alternate containers do not have to be separated by zone for verification if the mailing is prepared under 705.2.0, 705.3.0, 705.4.0 or 5.3.3.

* * * * *

[Revise title of 5.3.4 as follows:]

5.3.4 Cotraying Presorted Mail With Barcoded Mail

The following standards apply:

[Revise items 5.3.4a and b as follows:]

a. If the mailing job contains only a Presorted mailing qualifying for and claiming the barcode discount and a Presorted mailing not claiming the barcode discount, both mailings must be cotrayed under 705.9.0. The two mailings may be cobundled under 705.11.0 before being cotrayed under 705.9.0.

b. If the mailing job also contains a carrier route mailing, the carrier route mailing must be prepared under 6.0.

[Revise title and text of the introductory paragraph only of 5.3.5 as follows:]

5.3.5 Traying and Labeling

Mailers must segregate trays or alternate containers destined within the origin/entry SCF under 366.2.7. Preparation sequence and labeling:

* * * * *

[Delete 5.6e in its entirety and add new items e through g as follows:]

e. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.
2. Line 2: "PSVC FLTS NDC NON BC."

f. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.
2. Line 2: "PSVC FLTS NON BC WKG."

g. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C.
2. Line 2: "PSVC FLTS NON BC WKG."

[Add a new 5.4 as follows:]

5.4 Containerization—Flat Tray Preparation and Labeling

Mailers must prepare bundled mail on pallets under 705.8.0 when minimum volume is available for a required pallet level. Mailers who are unable to palletize, or mailers of small volume mailings, must prepare bundles in flat trays or approved alternate containers under 5.4a through 5.4c. Mailers entering mailings at acceptance locations specified in item d below must prepare mailings according to the instructions in 5.4d instead of 5.4c. Preparation sequence and labeling:

a. *Origin-Entry 3 Digit* (optional); no minimum; when making these separations, mailers must segregate trays as described in 366.2.7; labeling:

1. Line 1: Column A, L002
2. Line 2: "PSVC FLTS 3D NON BC"

b. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.
2. Line 2: "PSVC FLTS NON BC."

c. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.
2. Line 2: "PSVC FLTS NON BC."

d. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office
2. Line 2: "PSVC FLTS NON BC."

6.0 Preparing Carrier Route Flats

* * * * *

[Revise title of 6.3 and 6.3.1 as follows:]

6.3 Traying

6.3.1 Required Traying

[Revise the introductory paragraph of 6.3.1 as follows:]

Mailers must prepare pallets under 705.8 when they reach the minimum load requirements described in 705.8.5.3 or may prepare flats as untrayed bundles under 2.7. Otherwise, mailers must prepare a direct carrier route tray or approved alternate container when the quantity of mail for an individual carrier route reaches either 20 addressed pieces or 20 pounds, whichever occurs first; smaller volumes are not permitted. Mailers must place remaining bundles in 5-digit scheme carrier routes trays or alternate containers, or 5-digit carrier routes trays or alternate containers, which have no minimum tray or container size. Carrier route trays or alternate containers also are subject to these conditions:

* * * * *

[Revise 6.3.1b as follows:]

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing or tray the mail by the actual piece count or mail weight for each tray or alternate container, if documentation can be provided with the mailing that shows the number of pieces and the total weight in each tray or alternate container.

6.3.2 Separation by Zone

[Revise 6.3.2 as follows:]

Pieces for each zone must be trayed or placed in approved alternate containers separately. When presented for verification, trays or alternate containers must be separated by zone. Exception: Pieces for different zones may be trayed or placed in alternate containers together, and the trays or alternate containers do not have to be separated by zone for verification if the mailing is prepared under one of the postage payment systems in 705.2.0 through 705.4.0 or under 6.3.3.

* * * * *

[Revise title and text of the introductory paragraph of 6.3.5 as follows:]

6.3.5 Tray Preparation

Mailers must segregate trays or alternate containers destined within the origin/entry SCF under 366.2.7. Preparation sequence and Line 1 tray labeling:

* * * * *

[Revise title of 6.3.6 as follows:]

6.3.6 Tray Label Line 2

* * * * *

[Revise title and text of 6.3.7 as follows:]

6.3.7 Exception to Traying

Traying or containerization is not required for bundles that are entered at DDU prices; such bundles may be bedloaded and may weigh up to 40 pounds each.

7.0 Preparing Barcoded Flats

7.1 Basic Standards

[Revise the second and third sentences of 7.1 as follows:]

* * * Bundle, tray or approved alternate container preparation is subject to 365.0. Trays or alternate containers must bear the appropriate barcoded tray labels under 4.9.

* * * * *

[Revise title of 7.4 as follows:]

7.4 Traying

[Revise title and introductory paragraph of 7.4.1 as follows:]

7.4.1 Tray Preparation and Labeling

Mailers must segregate trays or alternate containers destined within the origin/entry SCF under 366.2.7. Preparation sequence and labeling:

* * * * *

[Delete current item 7.4.1e in its entirety and add new items e through g as follows:]

e. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.
2. Line 2: "PSVC FLTS NDC BC."

f. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.
2. Line 2: "PSVC FLTS BC WKG."

g. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C.
2. Line 2: "PSVC FLTS BC WKG."

[Renumber current items 7.5 through 7.5.2 as new 7.6 through 7.6.2 and add a new 7.5 as follows:]

7.5 Containerization—Flat Tray Preparation and Labeling

Mailers must prepare bundled mail on pallets under 705.8.0 when minimum volume is available for a required pallet level. Mailers who are unable to palletize, or mailers of small volume mailings, must prepare bundles in flat trays or approved alternate containers as shown in 7.5a through 7.5c. Mailers entering mailings at acceptance locations specified in item d below must prepare mailings according to the instructions in 7.5d instead of 7.5c. Preparation sequence and labeling:

a. *Origin-Entry 3 Digit* (optional); no minimum; when making these separations, mailers must segregate trays under 366.2.7; labeling:

1. Line 1: Column A, L002
2. Line 2: "PSVC FLTS 3D BC."

b. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.
2. Line 2: "PSVC FLTS BC WKG."

c. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.
2. Line 2: "PSVC FLTS BC WKG."

d. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC FLTS BC WKG."

7.6 Mixed Price Preparation

[Revise title of renumbered 7.6.1 as follows:]

7.6.1 Cobundling and Cotraying Mixed Mail

The following standards apply to Bound Printed Matter:

[Revise renumbered 7.6.1a and b as follows:]

a. If the mailing job contains a carrier route mailing, a Presorted mailing qualifying for and claiming the barcode discount under 363.6.1, and a Presorted mailing (not claiming the barcode discount), then the carrier route mailing must be prepared under 6.0, and the Presorted mailing qualifying for and claiming the barcode discount and the Presorted mailing (not claiming the barcode discount) must be cotrayed under 705.9.0. As an option, the Presorted pieces may be cobundled together under 705.11.0. Cobundled pieces must be cotrayed under 705.9.0.

b. If the mailing job contains only a Presorted mailing qualifying for and claiming the barcode discount and a Presorted mailing (not claiming the barcode discount), both mailings must be cotrayed under 705.9.0. As an option, the Presorted pieces may be cobundled together under 705.11.0. Cobundled pieces must be cotrayed under 705.9.0.

* * * * *

7.6.2 Merged Containerization

[Revise renumbered 7.6.2 as follows:]

When the conditions and preparation standards in 705.10.0, 705.12.0, or 705.13.0 are met, 5-digit bundles of Presorted (barcoded and nonbarcoded pieces) and carrier route mail that are part of the same mailing job and class of mail may be combined on merged 5-digit scheme pallets, trays or approved alternate containers and merged 5-digit pallets, trays or approved alternate containers. Barcode discount pieces may be cobundled with presorted pieces under 705.11.0

366 Enter and Deposit

* * * * *

2.0 Presenting a Mailing

* * * * *

[Add a new 2.7 as follows:]

2.7 Segregation of Origin SCF Trays

Mailers must make all required, and may make any optional, origin/entry SCF, origin 3-digit (scheme) and origin/entry 5-digit trays destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations, mailpieces must be trayed or placed in alternative containers under 365.0 and segregated from the remainder of the mailing. Mailers must segregate the origin/entry trays by one of these methods: separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

* * * * *

3.0 Destination Entry

3.1 General

[Revise the second sentence of 3.1 as follows:]

* * * Eligibility for a destination entry price is determined by the sort level, processing category of the mail, and the type of container the mail is in (pallet, tray or alternate container). * * *

* * * * *

[Revise title and the first sentence of the text of 3.7 as follows:]

3.7 Mailings of Untrayed Bundles

Mailers may present untrayed, or uncontainerized, nonpalletized bundles of BPM flats that are properly prepared for and entered at DDU prices and unloaded according to standards in 3.9.9. * * *

* * * * *

4.0 Destination Network Distribution Center (DNDC) Entry

4.1 Eligibility

Pieces in a mailing meeting the standards in 3.0 and 4.0 are eligible for the DNDC price when they meet all of the following conditions:

* * * * *

[Revise 4.1d as follows:]

d. Are placed on a pallet, or placed in a tray or approved alternate container, that is labeled to the NDC or ASF where deposited, or labeled to a postal facility within that NDCs or ASFs service area (see Exhibit 4.1).

* * * * *

4.2 Presorted Flats

[Revise 4.2 as follows:]

Presorted flats on pallets, or placed in trays or approved alternate containers, at all sort levels may claim DNDC prices. Separate mixed ADC trays or alternate containers must be prepared for flats eligible for and claimed at the DNDC price and for flats not claimed at the DNDC price. Use the "label to" ZIP Code of the ADC to assign ADC bundles to the respective mixed ADC tray or alternate container. Use the address on the mailpieces to assign pieces to the respective mixed ADC bundle. All pieces in an ADC tray, alternate container or in a palletized ADC bundle are eligible for the DNDC discount if the ADC facility ZIP Code (shown in Line 1 of the corresponding tray label or the ADC facility that is the destination of the palletized ADC bundle as would be shown on an ADC tray label for that facility using L004, Column B) is within the service area of the NDC or ASF at which the tray or alternate container is deposited. Mail must be entered at the appropriate facility under 4.1.

4.3 Carrier Route Flats

[Revise the first sentence of 4.3 as follows:]

Carrier Route flats on pallets, or in trays or alternate containers, at all sort levels may claim DNDC prices. * * *

5.0 Destination Sectional Center Facility (DSCF) Entry

5.1 Eligibility

Pieces in a mailing meeting the standards in 3.0 and 5.0 are eligible for the DSCF price when they meet all of the following conditions:

* * * * *

[Revise 5.1d as follows:]

d. Are placed on a pallet, or placed in a tray or authorized alternate container, that is labeled to the facility where deposited or labeled to a postal facility within that facility's service area.

* * * * *

5.2 Presorted Flats

[Revise the first sentence of 5.2 as follows:]

Presorted flats and automation flats in trays or alternate containers for the 5-digit, 3-digit, and SCF sort levels or on pallets at the 5-digit scheme, 5-digit, 3-digit, SCF, and ASF sort levels may claim DSCF prices. * * *

5.3 Carrier Route Flats

[Revise the first sentence of 5.3 as follows:]

Carrier route flats in trays, or alternate containers, at all sort levels or on pallets at the 5-digit scheme carrier routes, 5-digit carrier routes, 3-digit, SCF, and ASF sort levels may claim DSCF prices. * * *

6.0 Destination Delivery Unit (DDU) Entry

* * * * *

6.2 Presorted Flats

[Revise the first sentence of 6.2 as follows:]

Presorted flats that weigh more than 1 pound in 5-digit trays or alternate containers, on 5-digit scheme or 5-digit

pallets, or prepared as untrayed or uncontainerized 5-digit bundles may claim DDU prices. * * *

6.3 Carrier Route Flats

[Revise the first sentence of 6.3 as follows:]

Carrier route flats in trays or alternate containers, on 5-digit carrier routes scheme and 5-digit carrier routes pallets, or prepared as untrayed or uncontainerized carrier route bundles may claim DDU prices. * * *

* * * * *

370 Media Mail

373 Prices and Eligibility

* * * * *

3.0 Price Eligibility for Media Mail Flats

* * * * *

3.4 Price Categories for Media Mail

Media Mail prices are based on the weight of the piece without regard to zone. The price categories and discounts are as follows:

[Revise 3.4a as follows:]

a. 5-Digit Presort Price. To qualify for the 5-digit price, a piece must be sorted to 5-digit trays or approved alternate containers under 375.5.0, or 5-digit pallets under 705.8.0. All logical 5-digit bundles on pallets must contain at least 10 pieces.

* * * * *

375 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise 1.3b as follows:]

b. 5-digit scheme (bundles, trays or approved alternate containers) for flats meeting the automation-compatibility standards in 301.3.0; the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code ranges in a single scheme, as shown in L007.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise 1.4b as follows:]

b. *An approved alternate container* is a container that is authorized by the appropriate USPS official, instead of a flat tray (tub) or pallet, for the handling and transport of bundled flat-size mailpieces or parcels. Alternate containers could include sacks, other USPS-supplied mail transport equipment, or mailer-supplied containers.

[Revise the second sentence of 1.4c as follows:]

c. * * * When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and trays, or approved alternate containers of flats before preparing 5-digit bundles and trays (or approved alternate containers). * * *

* * * * *

[Revise 1.4e as follows:]

e. The *required at* [quantity] instruction means that the particular unit must be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded, up to the maximum size or weight.

[Revise 1.4f as follows:]

f. The *optional at* [quantity] instruction means that the particular unit may be prepared for the corresponding presort level whenever the specified quantity is reached or exceeded, up to the maximum size or weight.

* * * * *

[Add a new 1.5 as follows:]

1.5 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in properly labeled flat trays or approved alternate containers.

2.0 Bundles

* * * * *

2.6 Preparing Bundles

Bundles of flat-size pieces must be secure and stable subject to the following:

* * * * *

[Revise 2.6b as follows:]

b. If placed in trays or approved alternate containers, Media Mail must meet the specific weight limits in 5.2.

2.7 Bundle Sizes

[Revise the fifth sentence of 2.7 as follows:]

* * * Unless otherwise noted, the maximum weight for bundles placed in trays or approved alternate containers is 20 pounds. * * *

* * * * *

[Revise title of 3.0 as follows:]

3.0 Trays and Alternate Containers

[Revise title and text of 3.1 as follows:]

3.1 Standard Containers

If mailers are unable to palletize, mailings must be prepared in flat trays or approved alternate containers.

[Add a new 3.2 as follows:]

3.2 Tray Preparation

Tray and alternate container preparation is subject to these standards:

a. Each tray or alternate container must bear the correct tray label.

b. The weight of a tray, or alternate container, and its content must not exceed 70 pounds.

[Revise title of 4.0 as follows:]

4.0 Tray Labels

4.1 Basic Standards

[Revise 4.1 as follows:]

Tray labels are subject to the following:

a. Use 2-inch labels for trays and approved alternate containers.

b. Illegible labels are not acceptable. Machine-printed labels (available from the USPS) ensure legibility. Legible hand-printed labels are acceptable.

[Revise title and text of the introductory sentence of 4.2 as follows:]

4.2 Physical Characteristics of a Tray Label

A tray label must meet these specifications:

* * * * *

[Revise 4.2d as follows:]

d. Height (perpendicular to printing): 1.860 inches minimum; 2.015 inches maximum.

[Renumber current items 4.3 through 4.7 as the new 4.4 through 4.8 and add a new 4.3 as follows:]

4.3 Additional Standards for Barcoded Tray Labels

In addition to 4.2, barcoded tray labels must meet the standards in 4.9 and 708.6.3.

4.4 Line 1 (Destination Line)

Line 1 (destination line) must meet these standards:

* * * * *

[Revise 4.4c as follows:]

c. Overseas Military Mail. On 5-digit trays or approved alternate containers for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the tray or alternate container.

4.5 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

[Revise 4.5a as follows:]

a. Placement: Line 2 must be the second visible line on the label. This line must show the class and processing category of the mail in the tray or alternate container and other information as specified by standards.

* * * * *

[Add a new 4.9 as follows:]

4.9 Basic Standards for Barcoded Tray Labels

Trays or approved alternate containers may bear barcoded tray labels meeting these general standards:

a. Mailers must use the appropriate size label as described in 4.1.

b. Mailer-produced barcoded labels must meet the standards in 708.6.0.

c. All information on barcoded labels must be machine-printed. Do not make alterations to preprinted barcoded labels.

d. Mailers must insert a barcoded label completely into the label holder on the tray or alternate container.

e. Intelligent Mail tray labels (see 708.6.0) may optionally be used on trays or alternate containers.

5.0 Preparing Presorted Flats

* * * * *

5.2 Bundling

5.2.1 Required Bundling

[Revise the third sentence of 5.2.1 as follows:]

* * * The maximum weight of each physical bundle is 20 pounds, except that 5-digit bundles placed in 5-digit tray or approved alternate container may weigh a maximum of 40 pounds.

* * *

* * * * *

[Revise title of 5.3 and 5.3.1 as follows:]

5.3 Traying

5.3.1 Required Traying

[Revise the introductory paragraph of 5.3.1 as follows:]

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise, mailers must prepare a tray or approved alternate container when the quantity of mail for a required presort destination reaches the minimums specified in 5.3.2. Smaller volumes are not permitted (except in mixed ADC trays or alternate containers).

[Revise title and text of the introductory paragraph only of 5.3.2 as follows:]

5.3.2 Traying and Labeling

Mailers must segregate trays or alternate containers destined within the origin/entry SCF as described in 376.2.1. Preparation sequence and labeling:

a. *5-digit/scheme* (optional, but required for 5-digit price); see 1.4c; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; minimum 10 addressed pieces; when making these separations; labeling:

[Revise items 5.3.2a1 and 5.3.2a2 as follows:]

1. Line 1: For 5-digit scheme trays or alternate containers, use L007, Column B. For 5-digit trays or alternate containers, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme trays or alternate containers, "PSVC FLT 5D SCH NBC." For 5-digit trays or alternate containers, "PSVC FLT 5D NBC."

* * * * *

[Delete 5.3.2d in its entirety and add new items d through f as follows:]

d. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column B.

2. Line 2: "PSVC FLTS NDC NON BC."

e. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "PSVC FLTS NON BC WKG."

f. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "PSVC FLTS NON BC WKG."

[Add a new 5.4 as follows:]

5.4 Containerization—Flat Tray Preparation and Labeling

For mail prepared in bundles, mailers must prepare pallets under 705.8.0 when minimum volume is available for a required pallet level. Mailers who are unable to palletize, or mailers of small volume mailings, must prepare bundles in flat trays or approved alternate containers under 5.4a through 5.4c. Mailers entering mailings at acceptance locations specified in item 5.4d must prepare mailings according to the instructions in 5.4d instead of 5.4c. Preparation sequence and labeling:

a. *Origin-Entry 3 Digit* (optional); no minimum; when making these separations, mailers must segregate trays under 376.2.1; labeling:

1. Line 1: Column A, L002

2. Line 2: "PSVC FLTS 3D NON BC

b. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC FLTS NON BC."

c. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC FLTS NON BC."

d. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office

2. Line 2: "PSVC FLTS NON BC."

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* * * * *

[Add a new 2.0 and 2.1 as follows:]

2.0 Presenting a Mailing

2.1 Segregation of Origin SCF Trays

Mailers must make all required, and may make any optional, origin/entry 3-digit and origin/entry 5-digit (scheme) trays destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations, mailpieces must be trayed or placed in alternative containers under 375.0 and segregated from the remainder of the mailing. Mailers must segregate the origin/entry trays by one of these methods: separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

380 Library Mail

383 Prices and Eligibility

* * * * *

3.0 Price Eligibility for Library Mail Flats

* * * * *

3.4 Price Categories for Library Mail

Library Mail prices are based on the weight of the piece without regard to zone. The price categories and discounts are as follows:

[Revise the second sentence of 3.4a as follows:]

a. * * * To qualify for the 5-digit price, a piece must be sorted to 5-digit trays or approved alternate containers under 385.5.0 or to 5-digit pallets under 705.8.0. * * *

* * * * *

385 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise 1.3b as follows:]

b. 5-digit scheme (bundles, trays and approved alternate containers) for flats meeting the automation-compatibility standards in 301.3.0: the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code ranges processed in a single scheme, as shown in L007.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise 1.4b as follows:]

b. *An approved alternate container* is a container that is authorized by the appropriate USPS official, instead of a flat tray (tub) or pallet, for the handling and transport of bundled flat-size mailpieces or parcels. Alternate containers could include sacks, other USPS-supplied mail transport equipment, or mailer-supplied containers.

[Revise the second sentence of 1.4c as follows:]

c. * * * When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and trays, or alternate containers of flats before preparing 5-digit bundles and trays (or alternate containers). * * *

* * * * *

[Revise 1.4e as follows:]

e. The *required at* [quantity] instruction means that the particular unit must be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded, up to the maximum size or weight.

[Revise 1.4f as follows:]

f. The *optional at* [quantity] instruction means that the particular unit may be prepared for the corresponding presort level whenever the specified quantity is reached or exceeded, up to the maximum size or weight.

* * * * *

[Add a new 1.5 as follows:]

1.5 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in properly labeled flat trays or approved alternate containers.

2.0 Bundles

* * * * *

2.6 Preparing Bundles

Bundles of flat-size pieces must be secure and stable subject to the following:

* * * * *

[Revise 2.6b as follows:]

b. If placed in trays or approved alternate containers, Library Mail must meet the specific weight limits in 5.2

* * * * *

[Revise title of 3.0 as follows:]

3.0 Trays and Alternate Containers

[Revise title and text of 3.1 as follows:]

3.1 Standard Containers

If mailers are unable to palletize, mailings must be prepared in flat trays or approved alternate containers.

[Add a new 3.2 as follows:]

3.2 Tray Preparation

Tray and alternate container preparation is subject to these standards:

a. Each tray or alternate container must bear the correct tray label.

b. The weight of a tray, or alternate container, and its content must not exceed 70 pounds.

[Revise title of 4.0 as follows:]

4.0 Tray Labels

4.1 Basic Standards

[Revise 4.1 as follows:]

Tray labels are subject to the following:

a. Use 2-inch labels for trays and approved alternate containers.

b. Illegible labels are not acceptable. Machine-printed labels (available from the USPS) ensure legibility. Legible hand-printed labels are acceptable.

[Revise title and text of the introductory sentence of 4.2 as follows:]

4.2 Physical Characteristics of a Tray Label

A tray label must meet these specifications:

* * * * *

[Revise 4.2d as follows:]

d. Height (perpendicular to printing): 1.860 inches minimum; 2.015 inches maximum.

[Renumber current 4.3 through 4.7 as the new 4.4 through 4.8 and add a new 4.3 as follows:]

4.3 Additional Standards for Barcoded Tray Labels

In addition to 4.2, barcoded tray labels must meet the standards in 4.9 and 708.6.3.

4.4 Line 1 (Destination Line)

Line 1 (destination line) must meet these standards:

* * * * *

[Revise 4.4c as follows:]

c. *Overseas Military Mail.* On 5-digit trays or approved alternate containers for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the tray or alternate container.

4.5 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

[Revise 4.5a as follows:]

a. *Placement:* Line 2 must be the second visible line on the label. This line must show the class and processing category of the mail in the tray or alternate container and other information as specified by standards.

* * * * *

[Add a new 4.9 as follows:]

4.9 Basic Standards for Barcoded Tray Labels

Trays or approved alternate containers may bear barcoded tray labels. When used, barcoded labels must meet these general standards:

a. Mailers must use the appropriate size label as described in 4.1.

b. Mailer-produced barcoded labels must meet the standards in 708.6.0.

c. All information on barcoded labels must be machine-printed. Do not make alterations to preprinted barcoded labels.

d. Mailers must insert a barcoded label completely into the label holder on the tray or alternate container.

e. Intelligent Mail tray labels (see 708.6.0) may optionally be used on trays or alternate containers.

5.0 Preparing Presorted Flats

* * * * *

5.2 Bundling

5.2.1 Required Bundling

[Revise the third sentence of 5.2.1 as follows:]

* * * The maximum weight of each physical bundle is 20 pounds, except that 5-digit bundles placed in 5-digit tray or approved alternate container may weigh a maximum of 40 pounds. * * *

* * * * *

[Revise title of 5.3 and 5.3.1 as follows:]

5.3 Traying

5.3.1 Required Traying

[Revise the introductory paragraph of 5.3.1as follows:]

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise, mailers must prepare a tray or approved alternate container when the quantity of mail for a required presort destination reaches the minimums specified in 5.3.2. Smaller volumes are not permitted (except in mixed ADC trays or alternate containers).

[Revise title and text of introductory paragraph only of 5.3.2 as follows:]

5.3.2 Traying and Labeling

Mailers must segregate trays or alternate containers destined within the origin/entry SCF under 386.2.1. Preparation sequence and labeling:

* * * * *

[Revise item 5.3.2a1 and 5.3.2a2 as follows:]

1. Line 1: For 5-digit scheme trays or alternate containers, use L007, Column B. For 5-digit trays or alternate containers, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme trays or alternate containers, "PSVC FLT 5D SCH NBC." For 5-digit trays or alternate containers, "PSVC FLT 5D NBC."

* * * * *

[Delete item 5.3.2d in its entirety and add new items d through f as follows:]

d. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "PSVC FLTS NDC NON BC."

e. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "PSVC FLTS NON BC WKG."

f. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "PSVC FLTS NON BC WKG."

[Add a new 5.4 as follows:]

5.4 Containerization—Flat Tray Preparation and Labeling

For mail prepared in bundles, mailers must prepare pallets under 705.8.0 when minimum volume is available for a required pallet level. Mailers who are unable to palletize, or mailers of small volume mailings, must prepare bundles in flat trays or approved alternate containers as shown in 5.4a through 5.4c. Mailers entering mailings at acceptance locations specified in 5.4d must prepare mailings according to the instructions in 5.4d instead of 5.4c. Preparation sequence and labeling:

a. *Origin-Entry 3 Digit* (optional); no minimum; when making these separations, mailers must segregate trays under 346.1.3; labeling:

1. Line 1: Column A, L002.

2. Line 2: "PSVC FLTS 3D NON BC."

b. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C. information for the facility serving the 3-digit ZIP Code prefix of entry Post Office

2. Line 2: "PSVC FLTS NON BC."

c. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC FLTS NON BC."

d. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office

2. Line 2: "PSVC FLTS NON BC."

386 Enter and Deposit

* * * * *

[Add a new 2.0 as follows:]

2.0 Presenting a Mailing

2.1 Segregation of Origin SCF Trays

Mailers must make all required, and may make any optional, origin/entry 3-digit and origin/entry 5-digit (scheme) trays destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations, mailpieces must be trayed or placed in alternative containers under 385.0 and segregated from the remainder of the mailing. Mailers must segregate the origin/entry trays by one of these methods: separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

400 Commercial Parcels

* * * * *

430 First-Class Mail

433 Prices and Eligibility

1.0 Prices and Fees for First-Class Mail

* * * * *

1.4 Surcharge

[Revise the introductory sentence of 1.4 as follows:]

Unless prepared in 5-digit/scheme trays, sacks, or approved alternate containers; or paid at the single-piece prices, presorted parcels are subject to a surcharge if any of the following characteristics apply:

* * * * *

4.0 Price Eligibility for Presorted First-Class Mail Parcels

4.1 5–Digit Price

[Revise 4.1 as follows:]

The 5-digit price applies to presorted parcels in a 5-digit/scheme tray, sack or approved alternate container containing at least 10 pounds of parcels.

4.2 3–Digit Price

[Revise 4.2 as follows:]

The 3-digit price applies to presorted parcels in a 3-digit tray or approved alternate container containing at least 10 pounds of parcels.

4.3 ADC Price

[Revise 4.3 as follows:]

The ADC price applies to presorted parcels in a 3-digit origin tray or approved alternate container (no

minimum), and to parcels in an ADC tray or approved alternate container containing at least 10 pounds of parcels.

4.4 Single-Piece Price

[Revise 4.4 as follows:]

The single-piece price applies to presorted parcels in a mixed ADC tray or approved alternate container, with no minimum volume requirement.

* * * * *

435 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Resequence current items 1.4c through f as the new d through g and add a new item c as follows:]

c. *An approved alternate container* is a container that is authorized by the appropriate USPS official, instead of a flat tray (tub) or pallet, for the handling and transport of bundled flat-size mailpieces or parcels. Alternate containers could include sacks, other USPS-supplied mail transport equipment, or mailer-supplied containers.

[Revise resequenced 1.4d as follows:]

d. An origin/entry 3-digit tray or approved alternate container contains all mail (regardless of quantity) for a 3-digit ZIP Code area processed by the SCF in whose service area the mail is verified/entered. Mailpieces may be optionally separated for each such 3-digit area regardless of the volume of mail. These separations are optional, but mailers making these separations must segregate flat trays, approved alternate containers or pallets labeled to destinations within the origin 3-digit area be segregated from the remainder of the mailing as described in 436.1.5.

* * * * *

[Revise resequenced 1.4g as follows:]

g. A "logical" presort destination represents the total number of pieces in a mailing that are eligible for a specific presort level based on the required sortation, but which might not be contained in one container (tray, alternate container or pallet) due to preparation requirements or the size of the individual pieces.

[Add a new 1.5 as follows:]

1.5 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in properly labeled flat trays or approved alternate containers.

[Revise title of 2.0 as follows:]

2.0 Trays and Alternate Containers

[Delete current 2.1, Presort, in its entirety, renumber current 2.2 and 2.3 as the new 2.1 and 2.2, and revise renumbered 2.1 as follows:]

2.1 Standard Containers

If mailers are unable to palletize, mailings must be prepared in flat trays, sacks (for 5-digit or 5-digit scheme separations), or approved alternate containers. A postmaster may authorize nonpostal containers for a small-volume presorted mailing if the mailing weighs no more than 20 pounds, consists primarily of mail or bundles of mail for local ZIP Codes, and requires no USPS transportation for processing.

[Revise title and text of renumbered 2.2 as follows:]

2.2 Tray Preparation

Tray, alternate container or sack preparation is subject to these standards:

a. Each tray, alternate container or sack must bear the correct tray label.

b. The weight of a tray, alternate container or sack, and its content must not exceed 70 pounds.

[Revise title of 3.0 as follows:]

3.0 Tray Labels

3.1 Basic Standards

[Revise 3.1 as follows:]

Tray labels are subject to the following:

a. Use 2-inch tray labels for trays, approved alternate containers and sacks.

b. Illegible labels are not acceptable. Machine-printed labels (available from the USPS) ensure legibility. Legible hand-printed labels are acceptable.

c. Barcoded tray labels are subject to 3.9 and 708.6.0.

[Renumber 3.2 through 3.7 as the new 3.3 through 3.8 and add a new 3.2 as follows:]

3.2 Physical Characteristics of a Tray Label

A tray label must meet these specifications:

a. Color: white or manila.

b. Weight: 70-pound or heavier stock (required for mailings of automation-compatible flats, optional for others).

c. Length (parallel to printing): 3.250 inches minimum; 3.515 inches maximum.

d. Height (perpendicular to printing): 1.860 inches minimum; 2.015 inches maximum.

3.3 Line 1 (Destination Line)

Line 1 (destination line) must meet these standards:

* * * * *

[Revise renumbered 3.3c as follows:]

c. Overseas Military Mail. On 5-digit trays, approved alternate containers or sacks for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the tray, alternate container or sack.

3.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

[Revise renumbered 3.4a and b as follows:]

a. Placement: Line 2 must be the second visible line on the label. This line must show the class and processing category of the mail in the tray, alternate container or sack and other information as specified by standards.

b. Codes: The codes shown below must be used as appropriate on Line 2 of tray labels.

* * * * *

3.5 Line 3 (Origin Line)

[Revise the first sentence of renumbered 3.5 as follows:]

Line 3 (origin line showing office of mailing or mailer information) must be the bottom line of required information unless the tray, alternate container or sack contains mail manifested using the Electronic Verification System (eVS) under 705.2.9. * * *

3.6 Electronic Verification System

[Revise renumbered 3.6 as follows:]

All trays, alternate containers or sacks containing parcels prepared and identified using the Electronic Verification System (eVS) under 705.2.9 must show "eVS" (or the alternatives "EVS" or "E–VS") directly below Line 3 using the same size and lettering used for Line 3. As an option, "eVS" may be placed as the first element on Line 3.

* * * * *

[Add a new 3.9 as follows:]

3.9 Basic Standards for Barcoded Tray Labels

Trays, approved alternate containers or sacks may bear barcoded tray labels. When used, barcoded labels must meet these general standards:

a. Mailers must use the appropriate size label as described in 3.1.

b. Mailer-produced barcoded labels must meet the standards in 708.6.0.

c. All information on barcoded labels must be machine-printed. Do not make alterations to preprinted barcoded labels.

d. Mailers must insert a barcoded label completely into the label holder on the tray or alternate container.

e. Intelligent Mail tray labels (see 708.6.0) may optionally be used on trays or alternate containers.

4.0 Preparing Presorted Parcels

* * * * *

[Revise title and text of the introductory paragraph only of 4.4 as follows:]

4.4 Containerization and Labeling

Mailers must segregate trays, approved alternate containers or sacks destined within the origin/entry SCF as described in 436.1.5. Preparation sequence and labeling:

* * * * *

[Revise 4.4a1 and 4.4a2 as follows:]

1. Line 1: For 5-digit scheme trays, alternate containers or sacks use L606, Column B. For 5-digit trays, alternate containers or sacks use city, state, and 5-digit ZIP Code on mail (see 3.2c for overseas military mail).

2. Line 2: For 5-digit scheme trays, alternate containers or sacks, "FCM PARCELS 5D SCH." For 5-digit trays, alternate containers or sacks, "FCM PARCELS 5D."

* * * * *

436 Enter and Deposit

1.0 Deposit

* * * * *

[Revise 1.0 by adding a new 1.5 as follows:]

1.5 Segregation of Origin SCF Trays

Mailers must make all required, and may make any optional, origin/entry 3-digit and origin/entry 5-digit (scheme) trays destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations, mailpieces must be trayed or placed in alternative containers under 435.4 and segregated from the remainder of the mailing. Mailers must segregate the origin/entry trays by one of these methods: separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

* * * * *

440 Standard Mail

443 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Parcels

* * * * *

3.3 Additional Basic Standards for Standard Mail

Each Standard Mail mailing is subject to these general standards:

[Revise 3.3a as follows:]

a. All pieces in a mailing must be of the same processing category, except that irregular and machinable parcels may be combined in 5-digit scheme and 5-digit trays, approved alternate containers or sacks, or on 5-digit scheme and 5-digit pallets.

* * * * *

5.0 Additional Eligibility Standards for Presorted Standard Mail Pieces

* * * * *

5.2 Price Application

[Revise the last sentence in 5.2 as follows:]

* * * For example, when there are 10 pounds of combined machinable parcels, irregular parcels, and Not Flat-Machinable pieces in a 5-digit tray, approved alternate container or sack, all pieces are eligible for the 5-digit prices.

5.3 Prices for Machinable Parcels

5.3.1 5-Digit Price

The 5-digit price applies to qualifying machinable parcels that are dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU and presented:

[Revise 5.3.1a as follows:]

a. In a 5-digit/scheme (L606) tray, approved alternate container or sack containing at least 10 pounds of pieces.

* * * * *

5.3.2 NDC Price

The NDC price applies to qualifying machinable parcels as follows under either of the following conditions:

a. When dropshipped to an ASF or NDC and presented:

[Revise 5.3.2a1 as follows:]

1. In an ASF or NDC tray or approved alternate container containing at least 10 pounds of parcels, or

* * * * *

5.3.3 Mixed NDC Price

[Revise 5.3.3 as follows:]

The mixed NDC price applies to machinable parcels that are not eligible for 5-digit or NDC prices. Place machinable parcels at mixed NDC prices in origin NDC trays or approved alternate containers or on origin NDC pallets, then in mixed NDC trays or approved alternate containers, or on mixed NDC pallets. See 445.5.3.2 and 705.8.10.

5.4 Prices for Irregular Parcels and Not Flat-Machinable (NFM) Pieces

5.4.1 5-Digit Price

The 5-digit price applies to irregular parcels and NFMs that are dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU and presented:

[Revise 5.4.1a as follows:]

a. In a 5-digit/scheme (L606) tray, approved alternate container or sack containing at least 10 pounds of pieces.

* * * * *

5.4.2 SCF Price

The SCF price applies to irregular parcels or NFMs that are dropshipped and presented to a DSCF or DNDC:

[Revise 5.4.2a as follows:]

a. In an SCF tray or approved alternate container containing at least 10 pounds of parcels.

* * * * *

5.4.3 NDC Price

The NDC price applies to qualifying irregular parcels or NFMs as follows under either of the following conditions:

a. When dropshipped to an ASF or NDC and presented:

[Revise 5.4.3a1 as follows:]

1. In an ASF or NDC tray or approved alternate container containing at least 10 pounds of parcels, or

* * * * *

5.4.4 Mixed NDC Price

[Revise the last sentence of 5.4.4 as follows:]

* * * Place irregular parcels or NFMs at mixed NDC prices in origin NDC or mixed NDC trays or approved alternate containers under 445.5.4.4 or on origin NDC or mixed NDC pallets under 705.8.10.

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Parcels

* * * * *

6.3 Basic Price Enhanced Carrier Route Standards

* * * * *

6.3.2 Basic Price Discount for Irregular Parcels

[Revise 6.3.2 as follows:]

Basic prices apply to each piece in a carrier route or 5-digit carrier routes tray, approved alternate container or sack containing at least 125 pieces or 15 pounds of pieces. DALs must be in carrier route bundles of 10 or more pieces and prepared under 602.4.0.

6.4 High Density Enhanced Carrier Route Standards

* * * * *

6.4.2 High Density Price Discount for Irregular Parcels

[Revise 6.4.2 as follows:]

High density prices apply to each piece in a carrier route or 5-digit carrier routes tray, approved alternate container or sack containing at least 125 pieces or 15 pounds of pieces. DALs must be in carrier route bundles of 10 or more pieces and prepared under 602.4.0.

6.5 Saturation Enhanced Carrier Route Standards

* * * * *

6.5.2 Saturation Price Discount for Irregular Parcels

[Revise the first two sentences of 6.5.2 as follows:]

Saturation prices apply to each piece in a carrier route, or 5-digit carrier routes tray, approved alternate container or sack containing at least 125 pieces or 15 pounds of pieces. * * *

* * * * *

445 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise 1.3c as follows:]

c. 5-digit scheme (pallets, trays, alternate containers and sacks) for Standard Mail parcels: The ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Codes in a single scheme, as shown in L606.

* * * * *

[Revise 1.3g as follows:]

g. Origin/entry SCF: The separation includes bundles or pieces for one or more 3-digit areas served by the same sectional center facility (SCF) (see L005) in whose service area the mail is verified/entered. Mailpieces may be optionally separated for each such 3-digit area regardless of the volume of mail. Mailers making these separations must segregate flat trays, approved alternate containers or pallets labeled to destinations within the origin SCF area from the remainder of the mailing as described in 446.1.3.

* * * * *

[Revise the first sentence of 1.3l as follows:]

l. Residual pieces/bundles/trays/alternate containers contain material remaining after completion of a presort sequence. * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Resequence items 1.4b through j as the new c through k and add a new item b as follows:]

b. *An approved alternate container* is a container that is authorized by the appropriate USPS official, instead of a flat tray (tub) or pallet, for the handling and transport of bundled flat-size mailpieces or parcels. Alternate containers could include sacks, other USPS-supplied mail transport equipment, or mailer-supplied containers.

* * * * *

[Revise resequenced 1.4d as follows:]

d. A 5-digit/scheme sort for Standard Mail parcels yields 5-digit scheme trays, approved alternate containers, sacks or pallets for 5-digit ZIP Codes listed in L606 and 5-digit trays, alternate containers, sacks or pallets for other ZIP Codes. The 5-digit ZIP Codes in each scheme are treated as one presort destination subject to a single minimum volume (if required). Trays, alternate containers, sacks or pallets prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are considered 5-digit scheme sorted.

* * * * *

[Revise resequenced 1.4f as follows:]

f. The *required at* [quantity] instruction means that the particular unit must be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded, up to the maximum size or weight.

[Revise resequenced 1.4g as follows:]

g. The *optional at* [quantity] instruction means that the particular unit may be prepared for the corresponding presort level whenever the specified quantity is reached or exceeded, up to the maximum size or weight.

* * * * *

[Revise resequenced item k as follows:]

k. A "logical" presort destination represents the total number of pieces that are eligible for a specific presort level based on the required sortation, but which might not be contained in one bundle or in one container due to preparation requirements or the size of the individual pieces. For example, there may be 42 mailpieces for ZIP Code 43112 forming a "logical" 5-digit bundle, and the pieces are prepared in three physical 5-digit bundles.

* * * * *

[Add a new 1.5 as follows:]

1.5 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in flat trays or approved alternate containers.

2.0 Bundles

* * * * *

2.2 Address Visibility

* * * This standard does not apply to the following:

[Revise items 2.2a and b as follows:]

a. Bundles placed in or on 5-digit or 5-digit scheme (L001) trays, approved alternate containers, sacks or pallets.

b. Bundles placed in carrier route and 5-digit carrier routes trays or approved alternate containers.

* * * * *

[Revise the title and text of the introductory sentence of 2.6 as follows:]

2.6 Preparing Bundles in Trays or Sacks

In addition to the standards in 2.5, mailers must prepare and secure bundles placed in trays, approved alternate containers or sacks as follows:

* * * * *

2.7 Pieces With Simplified Address

[Revise the last sentence of 2.7 as follows:]

* * * Bundles must be secure and stable subject to weight limits in 705.8.0 if placed on pallets, and weight and height limits in 2.6 if placed in trays, approved alternate containers or sacks.

* * * * *

[Revise title of 3.0 as follows:]

3.0 Trays and Alternate Containers

3.1 Standard Containers

[Revise the first sentence of the introductory paragraph of 3.1 as follows:]

If mailers are unable to palletize, mailings must be prepared in flat trays or approved alternate containers, except that 5-digit, 5-digit scheme, carrier route and 5-digit carrier route separations may be prepared in sacks. * * *

* * * * *

[Revise title and text of 3.2 as follows:]

3.2 Tray Preparation

Tray and alternate container preparation is subject to these standards:

a. Each tray or alternate container must bear the correct tray label.

b. The weight of a tray, or alternate container, and its content must not exceed 70 pounds.

[Revise title of 4.0 as follows:]

4.0 Tray Labels

4.1 Basic Standards

[Revise 4.1 as follows:]

Tray labels are subject to the following:

a. Barcoded tray labels are subject to 4.9 and 708.6.5.

b. Illegible labels are not acceptable. Machine-printed labels (available from the USPS) ensure legibility. Legible hand-printed labels are acceptable.

* * * * *

[Revise title of 4.2 as follows:]

4.2 Physical Characteristics of a Tray Label

[Revise 4.2 as follows:]

A tray label must meet these specifications:

a. Color: White or manila.

b. Weight: 70-pound or heavier stock (required for mailings of automation-compatible flats, optional for others).

c. Length (parallel to printing): 3.250 inches minimum; 3.515 inches maximum.

d. Height (perpendicular to printing): 1.860 inches minimum; 2.015 inches maximum.

4.3 Line 1 (Destination Line)

Line 1 (destination line) must meet these standards:

* * * * *

[Revise 4.3c as follows:]

c. *Overseas Military Mail.* On 5-digit trays, approved alternate containers or sacks for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the tray, alternate container or sack.

4.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

[Revise 4.4a as follows:]

a. *Placement:* Line 2 must be the second visible line on the label. This line must show the class and processing category of the mail in the tray, alternate container or sack, and other information as specified by standards.

[Revise the introductory sentence of 4.4b as follows:]

b. *Codes:* The codes shown below must be used as appropriate on Line 2 of tray labels:

* * * * *

4.5 Line 3 (Origin Line)

[Revise the first sentence of 4.5 as follows:]

Line 3 (origin line showing office of mailing or mailer information) must be the bottom line of required information unless the tray, alternate container or sack contains mail manifested using the Electronic Verification System (eVS) under 705.2.9. * * *

* * * * *

[Add a new 4.9 as follows:]

4.9 Basic Standards for Barcoded Tray Labels

Trays, approved alternate containers or sacks may bear barcoded tray labels. When used, barcoded labels must meet these general standards:

a. Mailers must use the appropriate size label as described in 3.1.

b. Mailer-produced barcoded labels must meet the standards in 708.6.0.

c. All information on barcoded labels must be machine-printed. Do not make alterations to preprinted barcoded labels.

d. Mailers must insert a barcoded label completely into the label holder on the tray or alternate container.

e. Intelligent Mail tray labels (see 708.6.0) may optionally be used on trays or alternate containers.

5.0 Preparing Presorted Parcels

* * * * *

5.3 Preparing Machinable Parcels

[Revise title and text of 5.3.1 as follows:]

5.3.1 Containerization

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise, mailers may prepare 5-digit trays, approved alternate containers or sacks only for parcels that will be dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. Mailers may prepare ASF or NDC trays or alternate containers only for parcels that will be dropshipped to a DNDC (or ASF when claiming DNDC prices). There is no minimum for parcels prepared in 5-digit/scheme trays, alternate containers or sacks entered at a DDU. Mailers choosing to combine the preparation of either irregular parcels or any Not Flat-Machinable pieces with machinable parcels placed in 5-digit/scheme trays, alternate containers or sacks must prepare those containers or sacks under 5.3.2a.

[Revise title of 5.3.2 and text of the introductory sentence as follows:]

5.3.2 Containerization and Labeling

Preparation sequence and labeling:

[Revise 5.3.2a as follows:]

a. *5-digit/scheme* (optional, but required for 5-digit price), sacking allowed, see definition in 1.4c; allowed only for mail deposited at DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. Trays, approved alternate containers or sacks must contain a 10-pound minimum except at DDU which has no minimum; labeling:

1. Line 1: For 5-digit scheme trays, containers or sacks, use L606, Column B. For 5-digit trays, containers or sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme trays, containers or sacks, "STD MACH 5D SCH." For 5-digit trays, containers or sacks, "STD MACH 5D."

* * * * *

[Delete 5.3.2e in its entirety and add new items 5.3.2e and f as follows:]

e. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD MACH WKG."

f. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD MACH WKG."

5.4 Preparing Irregular Parcels

* * * * *

[Revise title and text of 5.4.2 as follows:]

5.4.2 Containerization

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise, mailers may prepare 5-digit trays, approved alternate containers or sacks only for parcels that will be dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. See 5.4.4 for restrictions on SCF, ASF, and NDC trays or alternate containers. Mailers must prepare a tray, alternate container or sack when the quantity of mail for a required presort

destination reaches 10 pounds of pieces. There is no minimum for parcels prepared in 5-digit/scheme trays, alternate containers or sacks entered at a DDU. Mailers choosing to combine irregular parcels with machinable parcels and NFMs in 5-digit/scheme trays, alternate containers or sacks must prepare the mailing under 5.3.2. Mailers may combine irregular and machinable parcels to other presort levels. Mailers may combine irregular parcels with NFMs weighing less than 6 ounces in trays, alternate containers or sacks under 5.4.4.

5.4.3 Drop Shipment

[Revise 5.4.3 as follows:]

A mailer using Priority Mail or Express Mail to drop ship Standard Mail irregular parcels may prepare containers or sacks containing fewer than 125 pieces or less than 15 pounds of mail.

[Revise title and text of the introductory paragraph only of 5.4.4 as follows:]

5.4.4 Containerization and Labeling

Mailers must segregate trays, alternate containers or sacks destined within the origin/entry SCF (no piece minimum) as described in 446.1.3. Preparation sequence and labeling:

* * * * *

[Revise items 5.4.4a1 and 5.4.4a2 as follows:]

1. Line 1: For 5-digit scheme trays, alternate containers or sacks, use L606, Column B. For 5-digit trays, alternate containers or sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme trays, alternate containers or sacks, "STD IRREG 5D SCH." For 5-digit trays, alternate containers or sacks, "STD IRREG 5D."

[Renumber current items 5.4.4b through f as the new 5.4.4c through g and add a new b as follows:]

b. *Origin SCF,* optional; no minimum; labeling:

1. For Line 1, L002, Column C.

2. For Line 2, "STD IRREG SCF."

* * * * *

[Delete renumbered 5.4.4g in its entirety and add new items g and h as follows:]

g. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD IRREG WKG."

h. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD IRREG WKG."

* * * * *

6.0 Preparing Not Flat-Machinable Pieces

* * * * *

[Revise title of 6.3 as follows:]

6.3 Containerization and Labeling

[Revise title and text of 6.3.1 as follows:]

6.3.1 Containerization

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise, mailers may prepare 5-digit trays, approved alternate containers or sacks only for NFMs that will be dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. See 6.3.2 and 6.3.3 for restrictions on SCF, ASF, and NDC trays or containers.

6.3.2 NFM Pieces Weighing Less Than 6 Ounces

[Revise the introductory paragraph only of 6.3.2 as follows:]

Mailers must segregate trays, alternate containers or sacks destined within the origin/entry SCF (no piece minimum) as described in 446.1.3. Preparation sequence and labeling of NFM pieces weighing less than 6 ounces:

[Revise 6.3.2a as follows:]

a. *5-digit/scheme* (optional, but required for 5-digit price), sacking allowed; see definition in 1.4c; allowed only for mail deposited at DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. Trays, approved alternate containers or sacks must contain a 10-pound minimum except at DDU entry (which has no minimum); labeling:

1. Line 1: For 5-digit scheme trays, alternate containers or sacks, use L606, Column B. For 5-digit trays, alternate containers or sacks, use city, state, and 5-digit ZIP Code destination on pieces (*see* 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme trays, alternate containers or sacks, "STD NFM 5D SCH." For 5-digit trays, alternate containers or sacks, "STD NFM 5D."

[Renumber current 6.3.2b through f as the new 6.3.2c through g and add a new 6.3.2b as follows:]

b. *Origin SCF* (optional); no minimum; labeling:

1. For Line 1, L002, Column C.

2. For Line 2, "STD NFM SCF."

* * * * *

[Delete renumbered 6.3.2g in its entirety and add a new 6.3.2 g and h as follows:]

g. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD NFM WKG."

h. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD NFM WKG."

6.3.3 NFM Pieces Weighing 6 Ounces or More

[Revise the introductory paragraph of 6.3.3 as follows:]

Preparation sequence and labeling for trays, alternate containers or sacks of NFM pieces that weigh 6 ounces or more:

[Revise 6.3.3a as follows:]

a. 5-digit/scheme (optional, but required for 5-digit price), sacking allowed; see definition in 1.4c; allowed only for mail deposited at DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. Trays, alternate containers or sacks must contain a 10-pound minimum except at DDU entry (which has no minimum); labeling:

1. Line 1: For 5-digit scheme trays, alternate containers or sacks, use L606, Column B. For 5-digit trays, alternate containers or sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme trays, alternate containers or sacks, "STD NFM MACH 5D SCH." For 5-digit trays, alternate containers or sacks, "STD NFM MACH 5D."

* * * * *

[Delete 6.3.3e in its entirety and add new 6.3.3e and f as follows:]

e. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD NFM WKG."

f. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD NFM WKG."

7.0 Preparing Enhanced Carrier Route Parcels

* * * * *

7.4 Bundling

7.4.1 Carrier Route Bundle Preparation

Prepare carrier route bundles of parcels as follows:

* * * * *

[Revise 7.4.1c as follows:]

c. The method of labeling a carrier route bundle is based on the following tray, sack or alternate container levels:

1. Carrier route tray, sack or alternate container: No bundle labeling is required.

2. 5-digit scheme or 5-digit carrier routes trays, sacks or alternate containers: Bundles must have a facing slip unless the pieces in the bundle have a carrier information line or an optional endorsement line (OEL).

7.4.2 Bundles and Sacks With Fewer Than the Minimum Number of Pieces Required

[Revise 7.4.2 as follows:]

As a general exception to 7.4.1, a mailer may prepare a bundle with fewer than 10 pieces and a less-than-full tray or alternate container with fewer than 125 pieces and less than 15 pounds of pieces to a carrier route when claiming the saturation price for the contents and the density standard is met.

7.5 Preparing Irregular Parcels

[Revise title of 7.5.1 and text of the introductory sentence as follows:]

7.5.1 Container Minimums

A tray, sack or approved alternate container must be prepared when the quantity of mail for a required presort destination reaches either 125 pieces or 15 pounds of pieces subject to these conditions:

* * * * *

[Revise 7.5.1b as follows:]

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 125-piece or 15-pound minimum applies) or tray (sacking or use of alternate containers allowed) by the actual piece count or mail weight for each tray, sack or container, if documentation shows the number of pieces and their total weight of the pieces in each tray or container.

* * * * *

[Revise title and text of the introductory paragraph of 7.5.2 only as follows:]

7.5.2 Containerization and Labeling

Mailers must segregate trays or alternate containers destined within the origin/entry SCF as described in 446.1.3. Preparation sequence and labeling:

* * * * *

446 Enter and Deposit

1.0 Presenting a Mailing

* * * * *

[Add a new 1.3 as follows:]

1.3 Segregation of Origin SCF Trays

Mailers must make all required, and may make any optional, separations containing irregular parcels destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations, mailpieces must be trayed or placed in alternative containers under 445.0 and segregated from the remainder of the mailing. Mailers must segregate the origin/entry trays by one of these methods: Separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

* * * * *

3.0 Destination Network Distribution Center (DNDC) Entry

* * * * *

3.3 Additional Standards for Machinable Parcels

[Delete the introductory sentence of 3.3 and 3.3b in their entirety. Use the text of 3.3a as the complete 3.3, and revise the second sentence as follows:]

* * * Machinable parcels palletized, trayed, sacked or placed in approved alternate containers may be sorted to destination NDCs or to destination NDCs and ASFs. * * *

* * * * *

4.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

4.2 Eligibility

Pieces in a mailing that meets the standards in 2.0 and 4.0 are eligible for the DSCF price, as follows:

[Revise items 4.2a and b as follows:]

a. When deposited at a DSCF (or USPS-designated facility), addressed for delivery within that facility's service area, and placed in a tray or approved alternate container, or on a pallet, that is labeled to that DSCF or to a postal facility within its service area.

b. When prepared in 5-digit bundles and placed on a 5-digit pallet or in a 5-digit scheme or 5-digit tray, alternate container or sack that is deposited at the destination delivery unit as defined in 5.1.

* * * * *

5.0 Destination Delivery Unit (DDU) Entry

* * * * *

5.2 Eligibility

Pieces in a mailing that meets the standards in 2.0 and 5.0 are eligible for the DDU price when deposited at a DDU, addressed for delivery within that facility's service area, and prepared as follows:

[Revise item 5.2a as follows:]

a. Irregular parcels in carrier route bundles sorted to carrier route trays, approved alternate containers or sacks, and otherwise eligible for and claimed at a carrier route price.

* * * * *

450 Parcel Select

453 Prices and Eligibility

* * * * *

3.0 Price Eligibility for Parcel Select

3.1 Destination Entry Price Eligibility

* * * * *

3.1.2 Basic Standards

For Parcel Select destination entry, pieces must meet the applicable standards in 455.4.0 and the following criteria:

[Revise 3.1.2a as follows:]

a. Pieces may be bedloaded on pallets, in pallet boxes on pallets, in flat trays,

approved alternate containers or sacks as specified in 456.2.1 through 456.2.16, depending on the facility at which the pieces are deposited.

* * * * *

3.1.3 DNDC Prices

For DNDC prices, pieces must meet the applicable standards in 3.0 and the following:

* * * * *

[Revise 3.1.3d as follows:]

d. Pieces must be within a ZIP Code eligible for DNDC prices under Exhibit 3.1.3 and must be prepared according to 455.4.0 and 705.8.0. Mail meeting the additional criteria in 456.2.15 or 456.2.16 may be deposited at an SCF.

* * * * *

455 Mail Preparation

1.0 General Information for Mail Preparation

1.1 Basic Standards

All mailings at Parcel Select prices are subject to these general standards:

* * * * *

[Revise 1.1b as follows:]

b. All pieces must be prepared on pallets when they have reached the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in flat trays or approved alternate containers.

* * * * *

1.4 Terms for Presort Level

Terms used for presort levels are defined as follows:

* * * * *

[Revise 1.4b as follows:]

b. 5-digit scheme (pallets, trays, approved alternate containers and sacks): The ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code in a single scheme, as shown in L606.

* * * * *

1.5 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Resequence items 1.5 b through i as the new 1.5c through j and add a new 1.5b as follows:]

b. *An approved alternate container* is a container that is authorized by the appropriate USPS official, instead of a flat tray (tub) or pallet, for the handling and transport of bundled flat-size mailpieces or parcels. Alternate containers could include sacks, other USPS-supplied mail transport equipment, or mailer-supplied containers.

* * * * *

[Revise resequenced 1.5d as follows:]

d. A *5-digit scheme sort* for parcels yields 5-digit scheme pallets, trays, approved alternate containers or sacks for those 5-digit ZIP Codes listed in L606, and 5-digit pallets, trays, alternate containers or sacks for other ZIP Codes. The 5-digit ZIP Codes in each scheme are treated as one presort destination subject to a single minimum volume. Pallets, trays, alternate containers or sacks prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are considered 5-digit scheme sorted. The 5-digit scheme sort is always optional, including when 5-digit sortation is required for price eligibility and need not be used for all possible 5-digit scheme sorts.

* * * * *

[Revise resequenced 1.5h as follows:]

h. An *overflow* container for Parcel Select DSCF mail is a 5-digit scheme or 5-digit tray, approved alternate container or sack prepared with fewer than seven pieces after all other required trays, alternate containers or sacks for that same 5-digit scheme or 5-digit ZIP Code area are prepared under 4.2. If all of the mail is trayed, containerized or sacked under 4.0, only one overflow container is permitted for each 5-digit scheme or 5-digit ZIP Code. If a mailing is prepared on pallets, remaining Parcel Select pieces mail may be prepared in one or more 5-digit scheme or 5-digit overflow containers only after one or more 5-digit scheme or 5-digit pallets are prepared to meet the minimum pallet requirement in 705.8.0. Pieces in overflow containers qualify for the Parcel Select DSCF prices.

* * * * *

1.6 Separation

[Revise the last sentence of 1.6 as follows:]

* * * If DSCF trays or approved alternate containers prepared under 4.2.3 are included in the same mailing as DSCF pallets prepared under 705.8.20.1e., then at the time of acceptance the mailer must separate the trays or alternate containers that are overflow from palletized mail from those trays or alternate containers prepared under 4.2.

* * * * *

[Renumber current items 1.7 and 1.8 as the new 1.8 and 1.9, and add a new 1.7 as follows:]

1.7 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in flat trays or approved alternate containers.

* * * * *

[Revise title of 2.0 as follows:]

2.0 Trays and Alternate Containers

[Renumber current 2.1 as the new 2.2 and add a new 2.1 as follows:]

2.1 Standard Containers

If mailers are unable to palletize, mailings must be prepared in flat trays or approved alternate containers, except that 5-digit and 5-digit scheme separations may be prepared in sacks.

[Revise title and text of renumbered 2.2 as follows:]

2.2 Tray Preparation

All tray, approved alternate container and sack preparation is subject to these standards:

a. Each tray, alternate container or sack must bear the correct tray label.

b. The weight of a tray, alternate container or sack, and its contents, must not exceed 70 pounds.

[Revise title of 3.0 as follows:]

3.0 Tray Labels

3.1 Basic Standards

[Revise 3.1 as follows:]

Tray labels are subject to the following:

a. Barcoded labels for mailings placed in flat trays or approved alternate containers are subject to 3.9 and 708.6.0.

b. Illegible labels are not acceptable. Machine-printed labels (available from the USPS) ensure legibility. Legible hand-printed labels are acceptable.

[Revise title of 3.2 as follows:]

3.2 Physical Characteristics of a Tray Label

[Revise 3.2 as follows:]

A tray label must meet these specifications:

a. Color: White or manila.

b. Weight: 70-pound or heavier stock (required for mailings of automation-compatible flats, optional for others).

c. Length (parallel to printing): 3.250 inches minimum; 3.515 inches maximum.

d. Height (perpendicular to printing): 1.860 inches minimum; 2.015 inches maximum.

3.3 Line 1 (Destination Line)

Line 1 (destination line) must meet these standards:

* * * * *

[Revise 3.3c as follows:]

c. Overseas Military Mail. On 5-digit trays, approved alternate containers or sacks for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the tray, alternate container or sack.

3.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

[Revise items 3.4a and b as follows:]

a. Placement: Line 2 must be the second visible line on the label. This line must show the class and processing category of the mail in the tray, alternate container or sack, and other information as specified by standards.

b. Codes: The codes shown below must be used as appropriate on Line 2 of tray labels.

* * * * *

3.5 Line 3 (Origin Line)

[Revise the first sentence of 3.5 as follows:]

Line 3 (origin line showing office of mailing or mailer information) must be the bottom line of required information unless the tray, approved alternate container or sack contains mail manifested using the Electronic Verification System (eVS) (see 4.6 for eVS labeling information). * * *

3.6 Electronic Verification System

[Revise the first sentence of 3.6 as follows:]

All trays, approved alternate containers or sacks containing parcels prepared and identified using the Electronic Verification System (eVS) under 705.2.9 must show "eVS" (or the alternatives "EVS" or "E–VS") directly below Line 3 using the same size and lettering used for Line 3. * * *

* * * * *

[Add a new 3.9 as follows:]

3.9 Basic Standards for Barcoded Tray Labels

Trays, approved alternate containers or sacks may bear barcoded tray labels. When used, barcoded labels must meet these general standards:

a. Mailers must use the appropriate size label as described in 3.1.

b. Mailer-produced barcoded labels must meet the standards in 708.6.0.

c. All information on barcoded labels must be machine-printed. Do not make alterations to preprinted barcoded labels.

d. Mailers must insert a barcoded label completely into the label holder on the tray or alternate container.

e. Intelligent Mail tray labels (see 708.6.0) may optionally be used on trays or alternate containers.

4.0 Preparing Destination Entry Parcel Select

4.1 Preparing Destination Delivery Unit (DDU) Parcel Select

* * * * *

4.1.2 Basic Standards

Pieces must meet the applicable standards in 4.0 and the following criteria:

* * * * *

[Revise the first sentence of 4.1.2c as follows:]

c. If the delivery unit serves more than one 5-digit ZIP Code, the pieces must be separated by 5-digit ZIP Code when unloaded, unless prepared as optional 5-digit scheme trays, approved alternate containers, sacks or pallets. * * *

[Revise title of 4.1.3 and text of the introductory paragraph as follows:]

4.1.3 Containerization and Labeling

There are no minimum traying, containerization, sacking or pallet preparation standards. DDU pieces may be bedloaded, trayed, placed in approved alternate containers, sacked, placed directly on pallets or placed in pallet boxes. Machinable and nonmachinable pieces may be combined in the same tray, alternate container or sack, or on the same pallet (including pallet boxes). Trayed, containerized and sacked mail must be labeled as follows:

* * * * *

4.2 Preparing Destination SCF (DSCF) Parcel Select

* * * * *

4.2.2 Basic Standards

Pieces must meet the applicable standards in 4.0 and the following criteria:

* * * * *

[Revise the first sentence of 4.2.2c as follows:]

c. Sorted to optional 5-digit scheme destinations under L606, Column B, and 5-digit destinations, either in trays, approved alternate containers, sacks or directly on pallets or in pallet boxes.

* * * * *

[Revise title and text of 4.2.3 as follows:]

4.2.3 Containerization and Labeling

Containerization requirements for DSCF entry:

a. Only 5-digit scheme and 5-digit trays, approved alternate containers or sacks are permitted.

b. Each 5-digit scheme and 5-digit tray, alternate container or sack must contain a minimum of seven pieces. Machinable and nonmachinable pieces may be combined in the same tray, alternate container or sack to meet this requirement. One overflow tray, alternate container or sack per 5-digit ZIP Code is permitted (no piece minimum).

c. 5-digit scheme tray, alternate container or sack labeling: Line 1, use L606, Column B; for Line 2, "PSVC PARCELS 5D SCH."

d. 5-digit tray, alternate container or sack labeling: Line 1, use city, state, and 5-digit ZIP Code on mail (see 3.3 for overseas military mail); for Line 2, "PSVC PARCELS 5D."

e. 3-digit nonmachinable tray or alternate container labeling: Line 1, use L002, Column A; for Line 2, "PSVC IRREG 3D."

f. See 705.8.0 for option to place 5-digit scheme and 5-digit DSCF trays, alternate containers or sacks and 3-digit nonmachinable trays or alternate containers on an SCF pallet.

4.3 Preparing Destination NDC (DNDC) Parcel Select

* * * * *

4.3.2 Basic Standards

Pieces must meet the applicable standards in 4.0 and the following criteria:

* * * * *

[Revise the first sentence of 4.3.2e as follows:]

e. Pieces must be within a ZIP Code eligible for DNDC prices under Exhibit 453.3.1.3 and, if trayed, placed in approved alternate containers, sacked or palletized, must be prepared according to 4.0 and 705.8.0. * * *

[Revise title and text of 4.3.3 as follows:]

4.3.3 Containerization and Labeling

DNDC mailing (if not bedloaded), must be prepared as follows:

a. DNDC machinable parcels must be trayed, placed in approved alternate containers or sacked under 6.0, or prepared on pallets under 705.8.0.

b. DNDC nonmachinable parcels that each weigh 35 pounds or less must be trayed, placed in approved alternate containers or sacked under 6.0, if the parcels do not contain perishables and the size of the parcels allows a tray, alternate container or sack to hold at least two pieces. DNDC nonmachinable parcels that cannot be containerized in this manner or that weigh more than 35

pounds must be transported as outside (uncontainerized) pieces. If authorized by the USPS, DNDC nonmachinable parcels may be palletized.

* * * * *

6.0 Preparing Barcoded Machinable Parcels

* * * * *

[Revise title of 6.3 and the text of the first sentence as follows:]

6.3 Containerization and Labeling

Traying, containerization or sacking is not required, however mailers may opt to prepare Parcel Select machinable parcels in trays, approved alternate containers or sacks under 2.0 or on pallets under 705.8.0. * * *

[Revise title of 6.3.1 and text of the introductory sentence as follows:]

6.3.1 Container Preparation

Container and preparation sequence, and Line 1 labeling:

[Revise items 6.3.1a and b as follows:]

a. 5-digit scheme: Optional (minimum of 10 pieces or 20 pounds); sacking allowed; for Line 1, use L606, Column B.

b. 5-digit; required (minimum of 10 pieces or 20 pounds); sacking allowed; for Line 1, use city, state and 5-digit ZIP Code destination of pieces (see 3.3c. for military mail).

* * * * *

[Delete 6.3.1e in its entirety and add new items e and f as follows:]

e. Tier 2 Network: Required (no minimum); for Line 1, use L603, Column C information for the Tier 2 facility serving the 3-digit ZIP Code prefix of entry Post Office.

f. Tier 2 Network: Required for specified acceptance locations (no minimum); if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers. For Line 1, use L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

[Revise title of 6.3.2 as follows:]

6.3.2 Tray Line 2

* * * * *

[Delete 6.3.2e in its entirety and add new items e and f as follows:]

e. Tier 2 Network: "PSVC MACH WKG."

f. Tier 2 Network, Directional: "PSVC MACH WKG."

456 Enter and Deposit

* * * * *

2.0 Deposit

2.1 Bedloaded Parcels

* * * * *

2.1.1 Containers

DNDC mailings (if not bedloaded), DDU mailings (if not bedloaded), and all DSCF mailings must be prepared as follows:

[Revise 2.1.1a through d as follows:]

a. Machinable parcels for which a DNDC, DSCF, or DDU price is claimed must be trayed, placed in approved alternate containers or sacked under 455.4.0, Preparing Destination Entry Parcel Select, or prepared on pallets under 705.8.0.

b. For DNDC price, nonmachinable parcels must be prepared under 455.4.3.3.

c. For DSCF, if prepared under 455.4.0, trays, alternate containers or sacks must contain at least seven pieces. If the tray, alternate container or sack is overflow from a 5-digit scheme, 5-digit, or 3-digit tray, alternate container or sack that contains at least seven pieces, then a tray, alternate container or sack may contain fewer than seven pieces. For DSCF, if trayed, placed in approved alternate containers or sacked as overflow from a 5-digit scheme, 5-digit, or 3-digit pallet that meets the pallet minimum, may contain any number of pieces. Machinable and nonmachinable pieces may be included in the same tray, alternate container or sack.

d. For DSCF, 5-digit scheme, 5-digit, and 3-digit trays, approved alternate containers or sacks may be bedloaded or be placed on SCF pallets that are labeled and otherwise prepared under 705.8.0.

* * * * *

[Revise 2.1.1f as follows:]

f. For DDU, there are no minimums for trays, approved alternate containers, sacks, pallets, or pallet boxes. DDU mail must be separated by 5-digit scheme and 5-digit and, if placed in trays, alternate containers, or sacks, on pallets, or in pallet boxes, it must be labeled to the 5-digit scheme or 5-digit destination. Machinable and nonmachinable pieces may be combined in 5-digit scheme and 5-digit trays, approved alternate containers or sacks, or on 5-digit scheme and 5-digit pallets (including pallet boxes).

* * * * *

2.12 Vehicle Unloading

Unloading of destination entry mailings is subject to these conditions:

* * * * *

[Revise the first sentence of 2.1.2c as follows:]

c. At destination delivery units (DDUs), drivers must unload all mail, whether bedloaded, trayed, containerized, sacked, or palletized (including boxes on pallets), within 1 hour of arrival. Unloading procedures are as follows:

* * * * *

2.16 Acceptance at Designated SCF–USPS Benefit

A mailing that is otherwise eligible for DNDC prices may be deposited, and accepted, at an SCF designated by the USPS when it benefits the USPS and:

[Revise item 2.16a as follows:]

a. The mailing contains only machinable parcels prepared in 5-digit scheme and 5-digit trays, alternate containers, sacks or pallets, and nonmachinable parcels prepared under 2.1.1.

* * * * *

460 Bound Printed Matter

* * * * *

465 Mail Preparation

1.0 General Information for Mail Preparation

1.1 Basic Preparation—Nonpresorted

[Revise 1.1 as follows:]

There are no presort, traying, containerization, or labeling standards for nonpresorted price Bound Printed Matter.

* * * * *

1.5 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Resequence 1.5b through j as the new 1.5c through k and add a new item 1.5b as follows:]

b. *An approved alternate container* is a container that is authorized by the appropriate USPS official, instead of a flat tray (tub) or pallet. Alternate containers could include sacks, other USPS-supplied mail transport equipment, or mailer-supplied containers.

* * * * *

[Revise the first three sentences of resequenced 1.5d as follows:]

d. A *5-digit scheme sort* for Bound Printed Matter parcels yields 5-digit scheme trays, approved alternate containers, sacks or pallets for those 5-digit ZIP Codes listed in L606 and 5-digit trays, alternate containers, sacks or pallets for other ZIP Codes. The 5-digit ZIP Codes in each scheme are treated as one presort destination subject to a single minimum volume. Trays, alternate containers, sacks or pallets prepared for a 5-digit scheme destination that contain pieces for only

one of the schemed 5-digit ZIP Codes are considered 5-digit scheme sorted. * * *

[Revise resequenced 1.5e as follows:]

e. An *origin 3-digit (or origin 3-digit scheme)* tray or approved alternate container includes all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF in whose service area the mail is verified. If more than one 3-digit (or 3-digit scheme) area is served, as indicated in L005, a separate tray or alternate container may be prepared for each. These separations are optional, but mailers making these separations must segregate flat trays, approved alternate containers or pallets labeled to destinations within the origin SCF area from the remainder of the mailing as described in 466.2.7.

[Revise resequenced 1.5f as follows:]

f. The *required at* [quantity] instruction means that the particular unit must be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded, up to the maximum size or weight.

[Revise resequenced 1.5g as follows:]

g. The *optional at* [quantity] instruction means that the particular unit may be prepared for the corresponding presort level whenever the specified quantity is reached or exceeded, up to the maximum size or weight.

* * * * *

[Add a new 1.6 as follows:]

1.6 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in flat trays or approved alternate containers.

2.0 Bundles

* * * * *

2.2 Address Visibility

* * * This standard does not apply to the following:

[Revise 2.2a and b as follows:]

a. Bundles placed in or on 5-digit or 5-digit scheme (L001) trays, approved alternate containers, sacks or pallets.

b. Bundles placed in carrier route and 5-digit carrier routes trays, approved alternate containers or sacks.

* * * * *

2.6 Bundle Sizes

[Revise 2.6 as follows:]

Mailers must prepare uncontainerized, nonpalletized bundles of Presorted irregular parcels for DDU entry according to 2.8 and 5.2 for parcels weighing less than 10 pounds and 5.3 for parcels weighing 10 pounds or more. Mailers must prepare uncontainerized, nonpalletized bundles of carrier route irregular parcels for DDU entry according to 2.7 and 6.2 for parcels weighing less than 10 pounds and 6.3 for parcels weighing 10 pounds or more.

[Revise title of 2.7 and the text of the introductory sentence of 2.7 as follows:]

2.7 Additional Standards for Uncontainerized Bundles Entered at DDU Facilities

Mailers may enter uncontainerized, nonpalletized bundles of irregular parcels at destination delivery units (DDUs) if all of the following conditions are met:

* * * * *

2.8 Pieces With Simplified Addresses

[Revise the last sentence of 2.8 as follows:]

* * * Bundles must be secure and stable subject to specific weight limits in 705.8.0 if placed on pallets, and for parcels in trays or approved alternate containers, specific weight limits in 5.0 and 6.0.

* * * * *

[Revise title of 3.0 as follows:]

3.0 Trays and Alternate Containers

[Renumber current 3.1 as the new 3.2 and add a new 3.1 as follows:]

3.1 Standard Containers

If mailers are unable to palletize, mailings must be prepared in flat trays or approved alternate containers, except that 5-digit, 5-digit scheme and carrier route separations may be prepared in sacks.

[Revise title and text of 3.2 as follows:]

3.2 Tray Preparation

All tray, approved alternate container and sack preparation is subject to these standards:

a. Each tray, alternate container or sack must bear the correct tray label.

b. The weight of a tray, alternate container or sack, and its contents, must not exceed 70 pounds.

[Revise title of 4.0 as follows:]

4.0 Tray Labels

4.1 Basic Standards

[Revise 4.1 as follows:]

Tray labels are subject to the following:

a. Barcoded labels for mailings placed in flat trays or approved alternate containers are subject to 4.9 and 708.6.0.

b. Illegible labels are not acceptable. Machine-printed labels (available from the USPS) ensure legibility. Legible hand-printed labels are acceptable.

[Revise title of 4.2 as follows:]

4.2 Physical Characteristics of a Tray Label

[Revise 4.2 as follows:]

A tray label must meet these specifications:

a. Color: White or manila.

b. Weight: 70-pound or heavier stock (required for mailings of automation-compatible flats, optional for others).

c. Length (parallel to printing): 3.250 inches minimum; 3.515 inches maximum.

d. Height (perpendicular to printing): 1.860 inches minimum; 2.015 inches maximum.

4.3 Line 1 (Destination Line)

Line 1 (destination line) must meet these standards:

* * * * *

[Revise 4.3c as follows:]

c. *Overseas Military Mail.* On 5-digit trays, approved alternate containers or sacks for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the tray, alternate container or sack.

4.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

* * * * *

[Revise the text of 4.4b as follows:]

b. *Codes:* The codes shown below must be used as appropriate on Line 2 of tray labels.

* * * * *

[Revise the "code" description for nonbarcoded "content type" (ninth from the top) as follows:]

CONTENT TYPE CODE

* * * * *

Nonbarcoded NON BC (trays/alternate containers) NBC (pallets and combined mail under 705.9.0)

* * * * *

4.5 Line 3 (Origin Line)

[Revise the first sentence of 4.5 as follows:]

Line 3 (origin line showing office of mailing or mailer information) must be the bottom line of required information unless the tray, approved alternate container or sack contains mail manifested using the Electronic Verification System (eVS). * * *

4.6 Electronic Verification System

[Revise the first sentence of 4.6 as follows:]

All trays, approved alternate containers or sacks containing parcels prepared and identified using the Electronic Verification System (eVS) under 705.2.9 must show "eVS" (or the alternatives "EVS" or "E–VS") directly below Line 3 using the same size and lettering used for Line 3. * * *

* * * * *

[Add a new 4.9 as follows:]

4.9 Basic Standards for Barcoded Tray Labels

Trays, approved alternate containers or sacks may bear barcoded tray labels. When used, barcoded labels must meet these general standards:

a. Mailers must use the appropriate size label as described in 3.1.

b. Mailer-produced barcoded labels must meet the standards in 708.6.0.

c. All information on barcoded labels must be machine-printed. Do not make alterations to preprinted barcoded labels.

d. Mailers must insert a barcoded label completely into the label holder on the tray or alternate container.

e. Intelligent Mail tray labels (see 708.6.0) may optionally be used on trays or alternate containers.

5.0 Preparing Presorted Parcels

5.1 Basic Standards

* * * * *

5.1.2 Separation

[Revise 5.1.2 as follows:]

Pieces for each zone must be trayed, sacked or placed in approved alternate containers separately, separated by zone. Exception: Pieces for different zones may be trayed or placed in alternate containers together, and the trays or alternate containers do not have to be separated by zone for verification if the mailing is prepared under 705.2.0, 705.3.0, 705.4.0 or under 5.1.3, Commingling Zones.

* * * * *

5.2 Preparing Irregular Parcels Weighing Less Than 10 Pounds

5.2.1 Required Bundling

[Revise the introductory paragraph of 5.2.1 as follows:]

Bundling is required before placing pieces into trays, approved alternate containers or sacks, except for pieces placed in 5-digit scheme and 5-digit trays, alternate containers or sacks when such pieces are enclosed in an envelope, full-length sleeve, full-length wrapper, or polybag and the minimum bundle size is met. Otherwise, a bundle must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces or 10 pounds, whichever occurs first. Smaller volumes are not permitted (except mixed ADC bundles). The maximum weight of each physical bundle is 20 pounds, except that 5-digit bundles placed in 5-digit scheme and 5-digit trays, alternate containers or sacks, or prepared for and entered at DDU prices, may weigh a maximum of 40 pounds each. Each physical bundle must contain at least two addressed pieces (except mixed ADC bundles). Bundling also is subject to these conditions:

* * * * *

[Revise title of 5.2.3 and text of the introductory paragraph as follows:]

5.2.3 Containerization

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise a tray, approved alternate container or sack must be prepared when the quantity of mail for a required presort destination reaches either 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted (except mixed ADC trays or alternate containers). Optional SCF trays or alternate containers may be prepared only when there are at least 10 addressed pieces or 20 pounds, whichever occurs first. Containerization is not required for 5-digit bundles when entered at DDU prices. Such bundles may be bedloaded and may weigh up to 40 pounds. Containerization is also subject to these conditions:

* * * * *

[Revise the last sentence of 5.2.3b as follows:]

b. * * * Alternatively, place pieces in trays, alternate containers or sacks by the actual piece count or mail weight for each bundle destination, provided that documentation shows the number of pieces and their total weight in each container.

* * * * *

[Revise title and introductory paragraph of 5.2.4 as follows:]

5.2.4 Containerization and Labeling

Mailers must segregate trays, alternate containers or sacks destined within the origin/entry SCF (no piece minimum) as described in 466.2.7. Preparation sequence and labeling:

[Revise 5.2.4a as follows:]

a. 5-digit/scheme (required); sacking allowed; labeling:

1. Line 1: For 5-digit scheme trays, approved alternate containers or sacks, use L606, Column B. For 5-digit trays, alternate containers or sacks, use city, state, and 5-digit ZIP Code on mail (see 4.4 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, "PSVC IRREG 5D SCH." For 5-digit trays, approved alternate containers or sacks, "PSVC IRREG 5D."

* * * * *

[Resequence current 5.2.4c through e as the new 5.2.4d through f and add a new 5.2.4c as follows:]

c. *Origin SCF,* optional; no minimum; labeling:

1. For Line 1, L005, Column B.

2. For Line 2, "PSVC IRREG SCF."

* * * * *

[Delete resequenced 5.2.4f in its entirety and add 5.2.4f through h as follows:]

f. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: "PSVC IRREG NDC."

g. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C.

2. Line 2: "PSVC IRREG WKG."

h. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C.

2. Line 2: "PSVC IRREG WKG."

5.3 Preparing Irregular Parcels Weighing 10 Pounds or More

* * * * *

[Revise title and text of 5.3.2 as follows:]

5.3.2 Containerization

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise a tray, approved alternate container or sack must be prepared when the quantity of mail for a required presort destination reaches 20 pounds. Smaller volumes are not permitted (except mixed ADC trays or alternate containers). Optional 5-digit scheme and optional SCF trays or alternate containers or sacks may be prepared only when there are at least 20 pounds. Smaller volumes are not permitted. Containerization is not required for 5-digit bundles when prepared for and entered at DDU prices. Such bundles may be bedloaded and may weigh up to 40 pounds.

[Revise title and text of the introductory paragraph only of 5.3.3 as follows:]

5.3.3 Containerization and Labeling

Mailers must segregate trays, alternate containers or sacks destined within the origin/entry SCF (no piece minimum) as described in 466.2.7. Preparation sequence and labeling:

[Revise 5.3.3a as follows:]

a. 5-digit/scheme (required); sacking allowed; labeling:

1. Line 1: For 5-digit scheme trays, approved alternate containers or sacks, use L606, Column B. For 5-digit trays, alternate containers or sacks, use city, state, and 5-digit ZIP Code on mail (*see* 4.4 for overseas military mail).

2. Line 2: For 5-digit scheme trays, alternate containers or sacks, "PSVC IRREG 5D SCH." For 5-digit trays, alternate containers or sacks, "PSVC IRREG 5D."

* * * * *

[Renumber current 5.3.3c through e as the new 5.3.3d through f and add a new 5.3.3c as follows:]

c. Origin SCF, optional; no minimum; labeling:

1. For Line 1, L005, Column B.

2. For Line 2, "PSVC IRREG SCF."

* * * * *

[Delete renumbered 5.3.3 f and add new 5.3.3 f through h as follows:]

f. Origin Network Distribution Center (NDC) Network (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: "PSVC IRREG NDC."

g. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C.

2. Line 2: "PSVC IRREG WKG."

h. Tier 2 Network (required for specified acceptance locations); if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C.

2. Line 2: "PSVC IRREG WKG."

5.4 Preparing Machinable Parcels Not Claiming DNDC Prices

[Revise title of 5.4.1 and text of the introductory paragraph as follows:]

5.4.1 Containerization

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise a tray, approved alternate container or sack must be prepared when the quantity of mail for a required presort destination reaches either 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted (except origin (mixed) NDC trays or alternate containers). Optional 5-digit scheme trays, approved alternate containers or sacks may be prepared only when there are at least 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted. Containerization is also subject to these conditions:

* * * * *

[Revise 5.4.1b as follows:]

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing or containerize by the actual piece count or mail weight for each bundle destination, provided that documentation can be provided with the mailing that shows the number of pieces and their total weight for each container.

* * * * *

[Revise title of 5.4.2 as follows:]

5.4.2 Containerization and Labeling

Preparation sequence and labeling:

[Revise 5.4.2a as follows:]

a. 5-digit/scheme (required); sacking allowed; labeling:

1. Line 1: For 5-digit scheme trays, approved alternate containers or sacks, use L606, Column B. For 5-digit trays, approved alternate containers or sacks, use city, state, and 5-digit ZIP Code on mail (see 4.4 for overseas military mail).

2. Line 2: For 5-digit scheme trays, approved alternate containers or sacks, "PSVC MACH 5D SCH." For 5-digit trays, approved alternate containers or sacks, "PSVC MACH 5D."

* * * * *

[Delete current 5.4.2c in its entirety and add new 5.4.2c and d as follows:]

c. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC MACH WKG."

d. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC MACH WKG."

5.5 Preparing Machinable Parcels Claiming DNDC Prices

[Revise title of 5.4.1 and text of the introductory paragraph as follows:]

5.5.1 Containerization

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise a tray, approved alternate container or sack must be prepared when the quantity of mail for a required presort destination reaches either 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted (except origin (mixed) NDC trays or alternate containers). Optional 5-digit scheme and optional ASF trays or alternate containers may be prepared only when there are at least 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted. See 466.4.0 for DNDC price eligibility. Containerization is also subject to these conditions:

* * * * *

[Revise 5.5.1b as follows:]

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing or containerize by the actual piece count or mail weight for each container destination, provided that documentation can be provided with the mailing that shows the number of pieces and their total weight for each container.

* * * * *

[Revise title of 5.5.2 as follows:]

5.5.2 Containerization and Labeling

Preparation sequence and labeling:

[Revise 5.5.2a as follows:]

a. 5-digit/scheme (required); sacking allowed; labeling:

1. Line 1: For 5-digit scheme trays, approved alternate containers or sacks, use L606, Column B. For 5-digit trays, approved alternate containers or sacks, use city, state, and 5-digit ZIP Code on mail (see 4.4 for overseas military mail).

2. Line 2: "PSVC MACH 5D SCHEME" or "PSVC MACH 5D SCH."

* * * * *

[Delete current 5.5.2d in its entirety and add new 5.5.2d and e as follows:]

d. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC MACH WKG."

e. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC MACH WKG."

6.0 Preparing Carrier Route Parcels

6.1 Basic Standards

* * * * *

6.1.2 Separation

[Revise 6.1.2 as follows:]

Pieces for each zone must be separately placed in trays, approved alternate containers or sacks. When presented for verification, trays, alternate containers or sacks must be separated by zone. Exception: Pieces for different zones may be containerized together, and the containers do not have to be separated by zone for verification if the mailing is prepared under 705.2.0, 705.3.0, 705.4.0, or under 6.1.3, Commingling Zones.

* * * * *

6.2 Preparing Irregular Parcels Weighing Less Than 10 Pounds

6.2.1 Bundle Preparation

[Revise the first sentence of the introductory paragraph of 6.2.1 as follows:]

Bundling is not required in direct carrier route trays or approved alternate containers. * * *

* * * * *

[Revise title of 6.2.2 and text of the introductory paragraph as follows:]

6.2.2 Containerization

Mailers may prepare irregular parcels in bundles on pallets or prepare uncontainerized bundles under 2.7. Otherwise, mailers must prepare a direct carrier route tray, sack or approved alternate container when the quantity of mail for an individual carrier route reaches either 10 addressed pieces or 20 pounds, whichever occurs first; smaller volumes are not permitted. Mailers then must place remaining bundles in 5-digit scheme carrier routes trays or alternate containers or 5-digit carrier routes trays or alternate containers, which have no minimum container size. Carrier route containers also are subject to these conditions:

* * * * *

[Revise 6.2.2b as follows:]

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing or containerize by the actual piece count or mail weight for each container destination, provided that documentation can be provided with the mailing that shows the number of pieces and their total weight for each container.

* * * * *

[Revise title of 6.2.3 and text of the introductory sentence as follows:]

6.2.3 Containerization and Labeling

Mailers must segregate trays, alternate containers or sacks destined within the origin/entry SCF (no piece minimum) as described in 466.2.7. Preparation sequence and Line 1 labeling:

[Revise items 6.2.3a through c as follows:]

a. Carrier route: required; sacking permitted; for Line 1, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

b. 5-digit scheme carrier routes: Optional (no minimum); sacking permitted; for Line 1, use L606, Column B.

c. 5-digit carrier routes: Required (no minimum); sacking permitted; for Line 1, use city, state, and 5-digit ZIP Code destination of bundles (for military mail, the ZIP Code is preceded by the prefixes under 4.3).

[Revise title of 6.2.4 as follows:]

6.2.4 Tray Label Line 2

* * * * *

6.3 Preparing Irregular Parcels Weighing 10 Pounds or More

[Revise the introductory paragraph of 6.3 as follows:]

Mailers may prepare irregular parcels in bundles on pallets or prepare uncontainerized bundles under 2.6. When preparing irregular parcels in trays, approved alternate containers or sacks, place parcels only in direct carrier route containers. Each carrier route container must contain a minimum of 20 pounds. Required preparation:

* * * * *

6.4 Preparing Machinable Parcels

[Revise title of 6.4.1 and text of introductory paragraph as follows:]

6.4.1 Required Carrier Route Containerization

Machinable parcels may be prepared only in direct carrier route containers. Each carrier route tray, sack or approved alternate container must contain a minimum of 10 addressed pieces or 20 pounds, whichever occurs first. Carrier route trays, sacks or alternate containers also are subject to these conditions:

* * * * *

[Revise 6.4.1b as follows:]

b. For nonidentical-weight pieces, mailers must use either the minimum that applies to the average piece weight for the entire mailing or container by the actual piece count or mail weight for each container destination, provided that documentation can be provided with the mailing that shows the number of pieces and their total weight for each container.

* * * * *

[Revise title of 6.4.2 as follows:]

6.4.2 Tray Label

* * * * *

466 Enter and Deposit

* * * * *

2.0 Presenting a Mailing

* * * * *

[Add a new 2.7 as follows:]

2.7 Segregation of Origin SCF Trays

Mailers must make all required, and may make any optional, separations containing irregular parcels destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations, mailpieces must be trayed or placed in alternative containers in accordance with 465.0 and segregated from the remainder of the mailing. Mailers must segregate the origin/entry trays by one of these methods: Separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

3.0 Destination Entry

3.1 General

[Revise the second sentence of 3.1 as follows:]

* * * Eligibility for a destination entry price is determined by the sort level, processing category of the mail, and the type of container the mail is in (tray, alternate container, sack or pallet). * * *

* * * * *

[Revise title and text of 3.7 as follows:]

3.7 Mailings of Uncontainerized Bundles

Mailers may present untrayed or uncontainerized, nonpalletized bundles

of BPM irregular parcels that are properly prepared for and entered at DDU prices and unloaded according to standards in 3.9.9. Pieces in these bundles are not eligible for barcode discounts.

* * * * *

4.0 Destination Network Distribution Center (DNDC) Entry

4.1 Eligibility

Pieces in a mailing meeting the standards in 3.0 and 4.0 are eligible for the DNDC price when they meet all of the following conditions:

* * * * *

[Revise 4.1d as follows:]

d. Are placed in a tray, approved alternate container, sack or on a pallet that is labeled to the NDC or ASF where deposited, or labeled to a postal facility within that NDCs or ASFs service area (see Exhibit 4.4).

* * * * *

4.3 Presorted Machinable Parcels

[Revise 4.3 as follows:]

Presorted machinable parcels in trays, approved alternate containers or sacks, or on pallets, at all sort levels may claim DNDC prices. Machinable parcels containerized under 465.5.0, or palletized under 705.8.0 may be sorted to destination NDCs under L601 or to destination NDCs and ASFs under L601 and L602. Except as provided in Exhibit 4.4, sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DNDC prices. Mailers may opt to sort some or all machinable parcels for ASF service area ZIP Codes to ASFs only when the mail will be deposited at the respective ASFs where the DNDC prices are claimed, under applicable volume standards, using L602. Mailers also may opt to sort machinable parcels only to destination NDCs under L601. When machinable parcels are sorted under L601, only mail for 3-digit ZIP Codes served by a NDC as listed in Exhibit 4.4 is eligible for DNDC prices (*i.e.,* mail for 3-digit ZIP Codes served by an ASF in Exhibit 4.4 is *not* eligible for DNDC prices, nor are 3-digit ZIP Codes that do not appear on Exhibit 4.4).

[Delete items 4.3a and b in their entirety.]

4.4 Presorted Irregular Parcels

[Revise item 4.4 as follows:]

Presorted irregular parcels in trays, approved alternate containers or on pallets at all sort levels may claim DNDC prices. All pieces in an ADC tray or alternate container, or in a palletized ADC bundle, are eligible for the DNDC price if the ADC facility ZIP Code (as shown in Line 1 of the corresponding tray label or the ADC facility that is the destination of the palletized ADC bundle as would be shown on an ADC tray label for that facility using L004, Column B) is within the service area of the NDC at which the tray or alternate container is deposited under Exhibit 4.4. Separate mixed ADC trays or alternate containers must be prepared for pieces eligible for and claimed at the DNDC price and for parcels not claimed at the DNDC price. Use the "label to" ZIP Code for the ADC to assign ADC bundles to the respective mixed ADC tray or alternate container. Use the address on the parcels to assign parcels to the respective mixed ADC bundle, tray or alternate container, as appropriate. Mail must be entered at the appropriate facility under 4.1.

* * * * *

4.5 Carrier Route Machinable Parcels

[Revise the text of 4.5 as follows:]

Carrier Route machinable parcels in individual carrier route trays, sacks or alternate containers may claim DNDC prices. Mail must be entered at the appropriate facility under 4.1.

* * * * *

5.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

[Revise the text of 5.2 through 5.5 as follows:]

5.2 Presorted Machinable Parcels

Presorted machinable parcels in trays, alternate containers, sacks, or on pallets, at the 5-digit scheme and 5-digit sort levels may claim DSCF prices. Mail must be entered at the appropriate facility under 5.1.

5.3 Presorted Irregular Parcels

Presorted irregular parcels in trays, alternate containers or sacks, at the 5-digit scheme, 5-digit, 3-digit, and SCF sort levels, or on pallets at the 5-digit scheme, 5-digit, 3-digit, SCF, and ASF sort levels may claim DSCF prices. Mail must be entered at the appropriate facility under 5.1.

5.4 Carrier Route Machinable Parcels

Carrier Route machinable parcels in individual carrier route trays, sacks or alternate containers may claim DSCF prices. Mail must be entered at the appropriate facility under 5.1.

5.5 Carrier Route Irregular Parcels

Carrier Route irregular parcels in trays, sacks or alternate containers at all sort levels or on pallets at the 5-digit scheme, 5-digit, 3-digit, SCF, and ASF sort levels may claim DSCF prices. Mail must be entered at the appropriate facility under 5.1.

6.0 Destination Delivery Unit (DDU) Entry

* * * * *

[Revise the text of 6.2 through 6.5 as follows:]

6.2 Presorted Machinable Parcels

Presorted machinable parcels in 5-digit scheme and 5-digit trays, alternate containers or sacks, or on 5-digit scheme and 5-digit pallets, may claim DDU prices. Mail must be entered at the appropriate facility under 6.1.

6.3 Presorted Irregular Parcels

Presorted irregular parcels in 5-digit scheme or 5-digit trays, alternate containers or sacks, or on 5-digit scheme or 5-digit pallets, or prepared as uncontainerized 5-digit bundles may claim DDU prices. Mailers must enter mail at the appropriate facility under 6.1.

6.4 Carrier Route Machinable Parcels

Carrier Route machinable parcels sorted to carrier route trays, sacks or alternate containers may claim DDU prices. Mail must be entered at the appropriate facility under 6.1.

6.5 Carrier Route Irregular Parcels

Carrier Route irregular parcels in trays or alternate containers, on 5-digit scheme and 5-digit pallets, or prepared as uncontainerized carrier route bundles may claim DDU prices. Mailers must enter mail at the appropriate facility under 6.1.

470 Media Mail

473 Prices and Eligibility

* * * * *

3.0 Price Eligibility for Media Mail Parcels

* * * * *

3.4 Price Categories for Media Mail

Media Mail prices are based on the weight of the piece without regard to zone. The price categories and discounts are as follows:

[Revise the first sentence of 3.4a as follows:]

a. To qualify for the 5-digit price, a piece must be prepared and sorted to either 5-digit scheme (machinable parcels only) and 5-digit trays, approved alternate containers or sacks under 475.5.0 or to 5-digit scheme (machinable parcels only) and 5-digit pallets under 705.8.0, or 705.20.0. * * *

* * * * *

475 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise 1.3b as follows:]

b. *5-digit scheme* (pallets, trays, approved alternate containers and sacks) for Media Mail parcels: The ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L606.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Resequence items 1.4b through h as the new 1.4c through i and add a new 1.4b as follows:]

b. *An approved alternate container* is a container that is authorized by the appropriate USPS official, instead of a flat tray (tub) or pallet, for the handling and transport of bundled flat-size mailpieces or parcels. Alternate containers could include sacks, other USPS-supplied mail transport equipment, or mailer-supplied containers.

* * * * *

[Revise the first three sentences of resequenced 1.4d as follows:]

d. A *5-digit scheme sort* for Media Mail parcels yields 5-digit scheme trays approved alternate containers, sacks or pallets for those 5-digit ZIP Codes listed in L606 and 5-digit trays approved alternate containers, sacks or pallets for other ZIP Codes. The 5-digit ZIP Codes in each scheme are treated as one presort destination subject to a single minimum volume (if required), with no further separation by 5-digit ZIP Code required. Trays approved alternate containers, sacks or pallets prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. * * *

[Redesignate resequenced 1.4e through i as the new 1.4f through j and insert a new 1.4e as follows:]

e. An *origin 3-digit (or origin 3-digit scheme)* tray/sack contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF in whose service area the mail is verified. If more than one 3-digit (or 3-digit scheme) area is served, as indicated in L005, a separate tray/sack must be prepared for each. These separations are optional, but mailers making these separations must segregate flat trays, approved alternate containers or pallets labeled to destinations within the origin SCF area from the remainder of the mailing under 476.2.1.

* * * * *

[Add a new 1.5 as follows:]

1.5 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in properly labeled flat trays or approved alternate containers.

* * * * *

[Revise title of 3.0 as follows:]

3.0 Trays and Alternate Containers

[Renumber current 3.1 as the new 3.2 and add a new 3.1 as follows:]

3.1 Standard Containers

If mailers are unable to palletize, mailings must be prepared in flat trays or approved alternate containers, except that 5-digit and 5-digit scheme separations may be prepared in sacks.

[Revise title and text of renumbered 3.2 as follows:]

3.2 Tray Preparation

All tray, approved alternate container and sack preparation is subject to these standards:

a. Each tray, alternate container or sack must bear the correct tray label.

b. The weight of a tray, alternate container or sack, and its contents, must not exceed 70 pounds.

* * * * *

[Revise title of 4.0 as follows:]

4.0 Tray Labels

4.1 Basic Standards

[Revise 4.1 as follows:]

Tray labels are subject to the following:

a. Barcoded labels for mailings placed in flat trays or approved alternate containers are subject to 4.9 and 708.6.5.

b. Illegible labels are not acceptable. Machine-printed labels (available from the USPS) ensure legibility. Legible hand-printed labels are acceptable.

[Revise title of 4.2 as follows:]

4.2 Physical Characteristics of a Tray Label

[Revise 4.2 as follows:]

A tray label must meet these specifications:

a. Color: white or manila.

b. Weight: 70-pound or heavier stock (required for mailings of automation-compatible flats, optional for others).

c. Length (parallel to printing): 3.250 inches minimum; 3.515 inches maximum.

d. Height (perpendicular to printing): 1.860 inches minimum; 2.015 inches maximum.

4.3 Line 1 (Destination Line)

Line 1 (destination line) must meet these standards:

* * * * *

[Revise 4.3c as follows:]

c. *Overseas Military Mail.* On 5-digit trays, approved alternate containers or sacks for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the tray, alternate container or sack.

4.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

[Revise 4.4a and b as follows:]

a. *Placement:* Line 2 must be the second visible line on the label. This line must show the class and processing category of the mail in the tray, alternate container or sack, and other information as specified by standards.

b. *Codes:* The codes shown below must be used as appropriate on Line 2 of tray labels.

* * * * *

4.5 Line 3 (Origin Line)

[Revise the first sentence of 4.5 as follows:]

Line 3 (origin line showing office of mailing or mailer information) must be the bottom line of required information unless the tray, approved alternate container or sack contains mail manifested using the Electronic Verification System (eVS) (*see* 4.6 for eVS labeling information). * * *

4.6 Electronic Verification System

[Revise the first sentence of 4.6 as follows:]

All trays, approved alternate containers or sacks containing parcels prepared and identified using the Electronic Verification System (eVS) under 705.2.9 must show "eVS" (or the alternatives "EVS" or "E–VS") directly below Line 3 using the same size and lettering used for Line 3. * * *

* * * * *

[Add a new 4.9 as follows:]

4.9 Basic Standards for Barcoded Tray Labels

Trays, approved alternate containers or sacks may bear barcoded tray labels. When used, barcoded labels must meet these general standards:

a. Mailers must use the appropriate size label as described in 3.1.

b. Mailer-produced barcoded labels must meet the standards in 708.6.0.

c. All information on barcoded labels must be machine-printed. Do not make alterations to preprinted barcoded labels.

d. Mailers must insert a barcoded label completely into the label holder on the tray or alternate container.

e. Intelligent Mail tray labels (see 708.6.0) may optionally be used on trays or alternate containers.

5.0 Preparing Media Mail Parcels

* * * * *

5.2 Preparing Machinable Parcels

[Revise title of 5.2.1 as follows:]

5.2.1 Containerization

[Revise the introductory paragraph of 5.2.1 as follows:]

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise, mailers must prepare a tray, approved alternate container or sack when the quantity of mail for a required presort destination reaches 10 addressed pieces or 20 pounds, whichever occurs first. At the mailer's option, a tray, approved alternate container or sack may be prepared when the quantity of mail reaches 1,000 cubic inches. Smaller volumes are not permitted (except in mixed NDC trays or alternate containers). Containerization also is subject to these conditions:

[Revise 5.2.1a as follows:]

a. Identical-weight pieces that weigh 2 pounds or less must be containerized using the 10-piece minimum; those that weigh more must be containerized using the 20-pound or 1,000 cubic inch minimum.

[Revise the second sentence of item 5.2.1b as follows:]

b. * * * Alternately, mailers may containerize by the actual piece count, mail weight for each bundle destination, or 1,000 cubic inch minimum, provided that documentation can be provided with the mailing that shows (specifically for each container) the number of pieces and their total weight.

* * * * *

[Revise title of 5.2.2 as follows:]

5.2.2 Containerization and Labeling

Preparation sequence and labeling:

[Revise 5.2.2a as follows:]

a. 5-digit/scheme (optional, but required for 5-digit price); sacking allowed; labeling:

1. Line 1: For 5-digit scheme trays, approved alternate containers or sacks, use L606, Column B. For 5-digit trays, alternate containers or sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme trays, alternate containers or sacks, "PSVC MACH 5D SCH." For 5-digit trays, alternate containers or sacks, "PSVC MACH 5D."

* * * * *

[Delete 5.2.2c in its entirety and add new 5.2.2 c and d as follows:]

c. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC MACH WKG."

d. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC MACH WKG."

* * * * *

5.3 Preparing Irregular Parcels

5.3.1 Required Bundling

[Revise the last four sentences of the introductory paragraph of 5.3.1 as follows:]

* * * Bundling is not required for pieces placed in 5-digit scheme trays, approved alternate containers or sacks and 5-digit trays, approved alternate containers or sacks when such pieces are enclosed in an envelope, full-length sleeve, full-length wrapper, or polybag and the minimum bundle volume is met. The maximum weight of each physical bundle is 20 pounds, except that 5-digit bundles placed in 5-digit trays, approved alternate containers or sacks may weigh a maximum of 40 pounds. Each physical bundle must contain at least two addressed pieces. Bundling is also subject to these conditions:

* * * * *

[Revise 5.3.1b as follows:]

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 10-piece or 10-pound minimum applies), or bundle by the actual piece count or mail weight for each container, if documentation can be provided with the mailing that shows (specifically for each container) the number of pieces in each bundle and their total weight.

* * * * *

[Revise title of 5.3.3 as follows:]

5.3.3 Containerization

[Revise the introductory paragraph of 5.3.3 as follows:]

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise, mailers must prepare a tray, approved alternate container or sack when the quantity of mail for a required presort destination reaches 10 addressed pieces or 20 pounds, whichever occurs first. At the mailer's option, a tray, alternate container or sack may be prepared when the quantity of mail reaches 1,000 cubic inches. Smaller volumes are not permitted (except in mixed ADC containers). Optional 5-digit scheme containers may be prepared only when there are at least 10 addressed pieces or 20 pounds. Smaller volumes are not permitted (except in mixed ADC containers). Containerization is also subject to these conditions:

[Revise 5.3.3a as follows:]

a. Identical-weight pieces weighing 2 pounds or less must be containerized using the 10-piece minimum; those that weigh more must be containerized using the 20-pound or 1,000 cubic inch minimum.

[Revise the second sentence of 5.3.3b as follows:

b. * * * Alternatively, mailers may containerize by the actual piece count, mail weight for each destination, or 1,000 cubic inch minimum, provided that documentation can be provided with the mailing that shows (specifically for each container) the number of pieces in each container and their total weight.

[Revise 5.3.3c as follows:]

c. Mailers must note on the postage statement which containerization method was used except for eVS mailings prepared under 705.2.9.

[Revise the title and introductory paragraph of 5.3.4 as follows:]

5.3.4 Containerization and Labeling

Mailers must segregate trays, alternate containers or sacks destined within the origin/entry SCF (no piece minimum) as

described in 476.2.1. Preparation sequence and labeling:

[Revise 5.3.4a as follows:]

a. 5-digit/scheme (optional, but required for 5-digit price); sacking allowed; when making these separations; labeling:

1. Line 1: For 5-digit scheme trays, approved alternate containers or sacks, use L606, Column B. For 5-digit trays, approved alternate containers or sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme trays, approved alternate containers or sacks, "PSVC IRREG 5D SCH." For 5-digit trays, approved alternate containers or sacks, "PSVC IRREG 5D."

* * * * *

[Delete 5.3.4d in its entirety and add new 5.3.4d through f as follows:]

d. Origin Network Distribution Center (NDC) Network (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: "PSVC IRREG NDC."

e. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C.

2. Line 2: "PSVC IRREG WKG."

f. Tier 2 Network (required for specified acceptance locations); if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C.

2. Line 2: "PSVC IRREG WKG."

476 Enter and Deposit

* * * * *

[Add a new 2.0 and 2.1 as follows:]

2.0 Presenting a Mailing

2.1 Segregation of Origin SCF Trays

Mailers must make all required, and may make any optional, separations containing origin/entry 3-digit and irregular parcels origin/entry 5-digit (scheme) trays, approved alternate containers or sacks destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations, mailpieces must be trayed or placed in alternative containers in accordance with 475.0 and segregated from the remainder of the mailing. Mailers must segregate the origin/entry trays by one of these methods: Separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

480 Library Mail

483 Prices and Eligibility

* * * * *

3.0 Price Eligibility for Library Mail Parcels

* * * * *

3.4 Price Categories for Library Mail

Library Mail prices are based on the weight of the piece without regard to zone. The price categories and discounts are as follows:

[Revise the first sentence 3.4a as follows:]

a. To qualify for the 5-digit price, a piece must be prepared and sorted to either 5-digit scheme (machinable parcels only) and 5-digit trays, approved alternate containers or sacks under 485.5.0 or to 5-digit scheme (machinable parcels only) and 5-digit pallets under 705.8.0, or 705.20.0. * * *

* * * * *

485 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise 1.3b as follows:]

b. *5-digit scheme* (pallets, trays, approved alternate containers and sacks) for Library Mail parcels: The ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L606.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Resequence items 1.4b through h as the new 1.4c through i and add a new 1.4b as follows:]

b. An *approved alternate container* is a container that is authorized by the appropriate USPS official, instead of a flat tray (tub) or pallet, for the handling and transport of bundled flat-size mailpieces or parcels. Alternate containers could include sacks, other USPS-supplied mail transport equipment, or mailer-supplied containers.

* * * * *

[Revise the first three sentences of resequenced 1.4d as follows:]

d. A *5-digit scheme sort* for Library Mail parcels yields 5-digit scheme trays, approved alternate containers, sacks or pallets for those 5-digit ZIP Codes listed in L606 and 5-digit trays, approved alternate containers, sacks or pallets for other ZIP Codes. The 5-digit ZIP Codes in each scheme are treated as one presort destination subject to a single minimum volume, with no further separation by 5-digit ZIP Code required. Trays, approved alternate containers, sacks or pallets prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted. * * *

[Redesignate resequenced items 1.4e through i as the new 1.4f through j and insert a new 1.4e as follows:]

e. An *origin 3-digit (or origin 3-digit scheme)* tray or alternate container contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF in whose service area the mail is verified. If more than one 3-digit (or 3-digit scheme) area is served, as indicated in L005, a separate tray or alternate container must be prepared for each. These separations are optional, but mailers making these separations must segregate flat trays, approved alternate containers or pallets labeled to destinations within the origin SCF area be segregated from the remainder of the mailing under 486.2.1.

* * * * *

[Add a new 1.5 as follows:]

1.5 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in properly labeled flat trays or approved alternate containers.

* * * * *

[Revise title of 3.0 as follows:]

3.0 Trays and Alternate Containers

[Renumber current 3.1 as the new 3.2 and add a new 3.1 as follows:]

3.1 Standard Containers

If mailers are unable to palletize, mailings must be prepared in flat trays or approved alternate containers, except that 5-digit and 5-digit scheme separations may be prepared in sacks.

[Revise title and text of renumbered 3.2 as follows:]

3.2 Tray Preparation

All tray, approved alternate container and sack preparation is subject to these standards:

a. Each tray, alternate container or sack must bear the correct tray label.

b. The weight of a tray, alternate container or sack, and its contents, must not exceed 70 pounds.

[Revise title of 4.0 as follows:]

4.0 Tray Labels

4.1 Basic Standards

[Revise 4.1 as follows:]

Tray labels are subject to the following:

a. Barcoded labels for mailings placed in flat trays or approved alternate containers are subject to 4.9 and 708.6.5.

b. Illegible labels are not acceptable. Machine-printed labels (available from the USPS) ensure legibility. Legible hand-printed labels are acceptable.

[Revise title of 4.2 as follows:]

4.2 Physical Characteristics of a Tray Label

[Revise 4.2 as follows:]

A tray label must meet these specifications:

a. Color: white or manila.

b. Weight: 70-pound or heavier stock (required for mailings of automation-compatible flats, optional for others).

c. Length (parallel to printing): 3.250 inches minimum; 3.515 inches maximum.

d. Height (perpendicular to printing): 1.860 inches minimum; 2.015 inches maximum.

4.3 Line 1 (Destination Line)

Line 1 (destination line) must meet these standards:

* * * * *

[Revise 4.3c as follows:]

c. *Overseas Military Mail.* On 5-digit trays, approved alternate containers or sacks for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the tray, alternate container or sack.

4.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

[Revise items 4.4a and b as follows:]

a. *Placement:* Line 2 must be the second visible line on the label. This line must show the class and processing category of the mail in the tray, alternate container or sack, and other information as specified by standards.

b. *Codes:* The codes shown below must be used as appropriate on Line 2 of tray labels.

* * * * *

4.5 Line 3 (Origin Line)

[Revise the first sentence of 4.5 as follows:]

Line 3 (origin line showing office of mailing or mailer information) must be the bottom line of required information unless the tray, approved alternate container or sack contains mail manifested using the Electronic Verification System (eVS) (*see* 4.6 for eVS labeling information). * * *

4.6 Electronic Verification System

[Revise the first sentence of 4.6 as follows:]

All trays, approved alternate containers or sacks containing parcels prepared and identified using the Electronic Verification System (eVS) under 705.2.9 must show "eVS" (or the alternatives "EVS" or "E–VS") directly below Line 3 using the same size and lettering used for Line 3. * * *

* * * * *

[Add a new 4.9 as follows:]

4.9 Basic Standards for Barcoded Tray Labels

Trays, approved alternate containers or sacks may bear barcoded tray labels.

When used, barcoded labels must meet these general standards:

a. Mailers must use the appropriate size label as described in 3.1.

b. Mailer-produced barcoded labels must meet the standards in 708.6.0.

c. All information on barcoded labels must be machine-printed. Do not make alterations to preprinted barcoded labels.

d. Mailers must insert a barcoded label completely into the label holder on the tray or alternate container.

e. Intelligent Mail tray labels (see 708.6.0) may optionally be used on trays or alternate containers.

5.0 Preparing Library Mail Parcels

* * * * *

5.2 Preparing Machinable Parcels

[Revise title of 5.2.1 as follows:]

5.2.1 Containerization

[Revise the introductory paragraph of 5.2.1 as follows:]

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise, mailers must prepare a tray, approved alternate container or sack when the quantity of mail for a required presort destination reaches 10 addressed pieces or 20 pounds, whichever occurs first. At the mailer's option, a tray, approved alternate container or sack may be prepared when the quantity of mail reaches 1,000 cubic inches. Smaller volumes are not permitted (except in mixed NDC trays or alternate containers). Containerization also is subject to these conditions:

[Revise 5.2.1a as follows:]

a. Identical-weight pieces that weigh 2 pounds or less must be containerized using the 10-piece minimum; those that weigh more must be containerized using the 20-pound or 1,000 cubic inch minimum.

[Revise the second sentence 5.2.1b as follows:]

b. * * * Alternately, mailers may containerize by the actual piece count, mail weight for each bundle destination, or 1,000 cubic inch minimum, provided that documentation can be provided with the mailing that shows (specifically for each container) the number of pieces and their total weight.

* * * * *

[Revise title of 5.2.2 as follows:]

5.2.2 Containerization and Labeling

Preparation sequence and labeling:

[Revise 5.2.2a as follows:]

a. 5-digit/scheme (optional, but required for 5-digit price); sacking allowed; labeling:

1. Line 1: For 5-digit scheme trays, approved alternate containers or sacks, use L606, Column B. For 5-digit trays, alternate containers or sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme trays, alternate containers or sacks, "PSVC MACH 5D SCH." For 5-digit trays, alternate containers or sacks, "PSVC MACH 5D."

* * * * *

[Delete 5.2.2c in its entirety and add new 5.2.2c and d as follows:]

c. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC MACH WKG."

d. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC MACH WKG."

5.3 Preparing Irregular Parcels

5.3.1 Required Bundling

[Revise the last four sentences of the introductory paragraph of 5.3.1 as follows:]

* * * Bundling is not required for pieces placed in 5-digit scheme trays, approved alternate containers or sacks and 5-digit trays, approved alternate containers or sacks when such pieces are enclosed in an envelope, full-length sleeve, full-length wrapper, or polybag and the minimum bundle volume is met. The maximum weight of each physical bundle is 20 pounds, except that 5-digit bundles placed in 5-digit trays, approved alternate containers or sacks may weigh a maximum of 40 pounds. Each physical bundle must contain at least two addressed pieces. Bundling is also subject to these conditions:

* * * * *

[Revise 5.3.1b as follows:]

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing, or bundle by the actual piece count or mail weight for each container, if documentation can be provided with the mailing that shows the number of pieces in each bundle and their total weight for each container.

* * * * *

[Revise title of 5.3.3 as follows:]

5.3.3 Containerization

[Revise the introductory paragraph of 5.3.3 as follows:]

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. Otherwise, mailers must prepare a tray, approved alternate container or sack when the quantity of mail for a required presort destination reaches 10 addressed pieces or 20 pounds, whichever occurs first. At the mailer's option, a tray, alternate container or sack may be prepared when the quantity of mail reaches 1,000 cubic inches. Smaller volumes are not permitted (except in mixed ADC containers). Optional 5-digit scheme containers may be prepared only when there are at least 10 addressed pieces or 20 pounds. Smaller volumes are not permitted (except in mixed ADC containers). Containerization is also subject to these conditions:

[Revise 5.3.3a as follows:]

a. Identical-weight pieces weighing 2 pounds or less must be containerized using the 10-piece minimum; those that weigh more must be containerized using the 20-pound or 1,000 cubic inch minimum.

[Revise the second sentence 5.3.3b as follows:]

b. * * * Alternatively, mailers may containerize by the actual piece count, mail weight for each destination, or 1,000 cubic inch minimum, provided that documentation can be provided with the mailing that shows (specifically for each container) the number of pieces in each container and their total weight.

[Revise 5.3.3c as follows:]

c. Mailers must note on the postage statement which containerization method was used except for eVS mailings prepared under 705.2.9.

[Revise the title and introductory paragraph only of 5.4.2 as follows:]

5.3.4 Containerization and Labeling

Mailers must segregate trays, alternate containers or sacks destined within the origin/entry SCF (no piece minimum) as described in 486.2.1. Preparation sequence and labeling:

[Revise 5.3.4a as follows:]

a. 5-digit/scheme (optional, but required for 5-digit price); sacking allowed; labeling:

1. Line 1: For 5-digit scheme trays, approved alternate containers or sacks, use L606, Column B. For 5-digit trays, approved alternate containers or sacks, use city, state, and 5-digit ZIP Code on mail (*see* 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme trays, approved alternate containers or sacks, "PSVC IRREG 5D SCH." For 5-digit trays, approved alternate containers or sacks, "PSVC IRREG 5D."

* * * * *

[Delete 5.3.4d in its entirety and add new 5.3.4d through f as follows:]

d. Origin Network Distribution Center (NDC) Network (required); no minimum; labeling:

1. Line 1: L601, Column C.

2. Line 2: "PSVC IRREG NDC."

e. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L603, Column C.

2. Line 2: "PSVC IRREG WKG."

f. Tier 2 Network (required for specified acceptance locations); if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C.

2. Line 2: "PSVC IRREG WKG."

* * * * *

486 Enter and Deposit

* * * * *

[Add a new 2.0 and 2.1 as follows:]

2.0 Presenting a Mailing

2.1 Segregation of Origin SCF Trays

Mailers must make all required, and may make any optional, separations containing origin/entry 3-digit and irregular parcels origin/entry 5-digit (scheme) trays, approved alternate containers or sacks destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. For all such separations, mailpieces must be trayed or placed in alternative containers in accordance with 485.0 and segregated from the remainder of the mailing. Mailers must segregate the origin/entry trays by one of these methods: separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

500 Additional Services

* * * * *

507 Mailer Services

* * * * *

11.0 Merchandise Return Service

* * * * *

11.7 Priority Mail Reshipment

* * * * *

[Revise the title of 11.7.3 as follows:]

11.7.3 Container Tag

[Revise the first sentence of 11.7.3 as follows:]

If a sack, or approved alternate container is used as the mail container for Priority Mail reshipment, the permit holder must provide a tag and an address label containing the delivery address of the postage due unit at the Post Office where the permit is held, the permit holder's address, a space for the customer's return address, and otherwise meet the format standards in 11.6 for each affected postal facility.

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700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

1.0 Customized MarketMail

* * * * *

1.4 Preparation Standards

* * * * *

1.4.5 Required Bundling

[Revise the first sentence of 1.4.5 as follows:]

Bundling is required before traying or filling other mailing containers. * * *

* * * * *

1.4.7 Required Containerizing

The following standards apply to containerizing CMM pieces:

* * * * *

[Revise the first sentence of 1.4.7b as follows:]

b. Bundles in drop shipment mailings under 246.2.0 and 246.5.0 must be placed in letter trays, flat trays, or approved alternate containers.

* * * * *

1.4.8 Containerizing and Labeling

Prepare and label containers as follows:

[Revise 1.4.8a as follows:]

a. Drop shipments under 246.2.0 and 246.5.0 must be prepared in 5-digit trays or approved alternate containers, or as an option, in 5-digit scheme (under L606, Column B), carrier route, or 5-digit carrier routes trays or containers, labeled as follows:

* * * * *

[Revise 14.8a2 and 8a3 as follows:]

2. Line 2: "DEL LTR STD CMM MAN" (for letter trays); "DEL FLTS STD CMM MAN" (for flat trays); "DEL STD CMM MAN" (for other approved alternate containers).

3. Line 3: Office of mailing or mailer information (see 707.21.0).

* * * * *

6.0 Combining Mailings of Standard Mail, Package Services, and Parcel Select Parcels

6.1 Basic Standards for Combining Parcels and NFMs

6.1.1 Basic Standards

Standard Mail parcels, NFMs, Package Services, and Parcel Select parcels in combined mailings must meet the following standards:

* * * * *

[Revise the last sentence of 6.1.1d as follows:]

d. * * * Pieces claimed at other prices in the same flat tray or approved alternate container or on the same pallet do not count towards these minimum volume requirements.

* * * * *

6.2 Combining Parcels and NFMs—DNDC Entry

* * * * *

6.2.2 Additional Standards

Standard Mail machinable parcels, NFMs 6 ounces or more, and Package Services and Parcel Select machinable parcels prepared for DNDC entry must meet the following conditions in addition to the basic standards in 6.1:

* * * * *

[Revise 6.2.2d as follows:]

d. Mailers must prepare all parcels on pallets or in pallet boxes under 8.0; or in flat trays, approved alternate containers or sacks under 6.2.3, or to achieve the finest level of sortation.

* * * * *

[Revise title and text of introductory sentence of 6.2.3 as follows:]

6.2.3 Containerization and Labeling

Preparation sequence and labeling:

[Revise the opening paragraphs of 6.2.3a and b as follows:]

a. 5-digit scheme, optional, but required for Standard Mail 5-digit price eligibility, 10-piece or 20-pound minimum; sacking permitted; labeling:

* * * * *

b. 5-digit, optional, but required for Standard Mail 5-digit price eligibility, 10-piece or 20-pound minimum; sacking permitted; labeling:

* * * * *

[Delete 6.2.3e in its entirety and add new 6.2.3e and f as follows:]

e. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: "MXD" followed by L601, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD/PSVC MACH WKG."

f. Tier 2 Network (required for specified acceptance locations); if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L603 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD/PSVC MACH WKG."

* * * * *

6.3 Combining Parcels—Parcel Select ONDC Presort, NDC Presort, DSCF, and DDU Prices

* * * * *

6.3.2 Preparation and Prices

Combined parcels must be prepared as follows:

* * * * *

[Revise the introductory paragraph of 6.3.2b as follows:]

b. Parcel Select or Bound Printed Matter Qualifying for DSCF Prices. Mailers must prepare the combined mailings under the 5-digit scheme and 5-digit tray, sack or approved alternate container requirements in 455.4.2 or the 5-digit scheme and 5-digit pallet requirements in 8.0 for the Parcel Select DSCF prices. All other requirements for Parcel Select DSCF prices and Standard Mail prices must be met. The following additional requirements apply:

[Revise 6.3.2b1 as follows:]

1. If trayed, sacked or placed in approved alternate containers under 455.4.2, the minimum requirement of seven pieces per tray, sack or container must be met with only Package Services and Parcel Select parcels. After the minimum tray, sack or container volume has been met; Standard Mail parcels may be included in the same tray, sack or container or in overflow trays, sacks or containers.

* * * * *

[Revise 6.3.2b5 as follows:]

5. Line 2 of 5-digit scheme pallet and tray labels must read: "STD/PSVC MACH 5D SCH." Line 2 of 5-digit pallet and tray labels must read: "STD/PSVC MACH 5D."

* * * * *

7.0 Combining Package Services and Parcel Select Parcels for Destination Entry

* * * * *

7.1 Combining Parcels—DSCF and DDU Entry

7.1.1 Qualification

[Revise the first sentence of the introductory paragraph of 7.1.1 as follows:]

Mailers may combine Package Services and Parcel Select parcels in 5-digit scheme and 5-digit flat trays, sacks or approved alternate containers or on 5-digit scheme and 5-digit pallets for entry either at a destination sectional center facility (DSCF) or a destination delivery unit (DDU) when authorized by the USPS under 7.5. * * *

7.1.2 Basic Standards

[Revise the introductory sentence of 7.1.2 as follows:]

All Package Services and Parcel Select parcels that meet the following conditions may be combined in 5-digit scheme and 5-digit flat trays, sacks or approved alternate containers or 5-digit scheme and 5-digit pallets under these conditions:

* * * * *

[Revise the first sentence of 7.1.2c as follows:]

c. All parcels must be prepared in flat trays, sacks or approved alternate containers under 7.2 or on pallets under 7.3. * * *

* * * * *

[Revise title of 7.1.3 as follows:]

7.1.3 Combined Parcels Prepared in Trays or Sacks—Price Eligibility

[Revise the introductory paragraph of 7.1.3 and items 7.1.3a through e as follows:]

In addition to the applicable standards in 455.4.0 and 466.3.0 through 466.6.0 for destination entry Parcel Select and Bound Printed Matter, the following standards apply for combined parcels prepared in flat trays, sacks or approved alternate containers:

a. Parcel Select DSCF prices apply to parcels that are in 5-digit scheme and 5-digit flat trays, sacks or approved alternate containers, each with at least 10 pieces of any combination of Parcel Select and Package Services mail, or that are in overflow trays, sacks or alternate containers under 7.2.2, when all other requirements for the DSCF price in 453.3.0 and 455.4.2 are met. Parcel Select DDU prices apply to parcels that are contained in 5-digit scheme and 5-digit trays, sacks or alternate containers, each with at least 10 pieces of any combination of Parcel Select and Package Services mail, or that are in overflow trays, sacks or alternate containers under 7.2.2, when all other requirements for the DDU price in 453.3.0 and 455.4.1 are met.

b. Presorted Bound Printed Matter DSCF prices apply to parcels that are in 5-digit scheme and 5-digit trays, sacks or alternate containers, each with at least 10 pieces of any combination of Parcel Select and Package Services mail, or that are in overflow trays, sacks or alternate containers under 7.2.2, when all other requirements for the DSCF price in 466.3.0 through 466.6.0 are met. Presorted Bound Printed Matter DDU prices apply to parcels that are contained in 5-digit scheme and 5-digit trays, sacks or alternate containers, each containing at least 10 pieces of any combination of Parcel Select and Package Services mail, or contained in overflow trays, sacks or alternate containers under 7.2.2, provided all other requirements for the DDU price in 466.3.0 through 466.6.0 are met.

c. Presorted Library Mail 5-digit prices apply to parcels that are in 5-digit scheme and 5-digit trays, sacks or alternate containers sacks, each with at least 10 pieces of any combination of Parcel Select and Package Services mail, or that are in overflow trays, sacks or alternate containers under 7.2.2.

d. Presorted Media Mail 5-digit prices apply to parcels that are in 5-digit scheme and 5-digit trays, sacks or alternate containers, each with at least 10 pieces of any combination of Parcel Select and Package Services mail, or that are in overflow trays, sacks or alternate containers under 7.2.2.

e. Single-piece price parcels that are in 5-digit scheme and 5-digit trays, sacks or alternate containers, each with at least 10 pieces of any combination of Parcel Select and Package Services mail, or that are in overflow trays, sacks or alternate containers under 7.2.2, qualify for single-piece prices.

[Revise title and text 7.1.4 as follows:]

7.1.4 Containerization

Only 5-digit scheme and 5-digit trays, sacks or alternate containers may be prepared. Each tray, sack or alternate container of combined Parcel Select and Package Services mail must contain at least 10 pieces. One overflow tray, alternate container or sack containing fewer than 10 pieces is permitted per destination.

[Revise title and text of the introductory sentence only of 7.15 as follows:]

7.1.5 Labeling

Tray labels must be prepared as follows:

* * * * *

7.2 Combining Parcel Select and Package Services Machinable Parcels for DNDC Entry

* * * * *

[Revise title and text of the introductory sentence only of 7.2.3 as follows:]

7.2.3 Containerization and Labeling

Preparation sequence, container type, and labeling:

* * * * *

[Revise the opening sentence of items 7.2.3c and d as follows:]

c. ASF, optional, allowed only for mail deposited at an ASF to claim DNDC price, 10-piece or 20-pound minimum; flat trays or approved alternate containers required; labeling:

* * * * *

d. NDC, required,10-piece or 20-pound minimum; flat trays or approved alternate containers required; labeling:

* * * * *

8.0 Preparing Pallets

* * * * *

8.2 Top Caps

8.2.1 Use

Top caps are used as follows:

[Revise 8.2.1a as follows:]

a. Except as provided below, all pallets or pallet boxes must be top-capped if the pallets are stacked two, three, or four tiers high when presented to the USPS for acceptance.

* * * * *

8.5 General Preparation

8.5.1 Presort

[Revise 8.5.1, starting with the forth sentence as follows:]

* * * For trays, approved alternate containers or machinable parcels on pallets, the mailer must prepare all required pallet levels before preparing any mixed ADC or mixed NDC pallets for a mailing job. Bundles that cannot be placed on pallets must be prepared in flat trays or other approved alternate containers under the applicable standards. Bundle reallocation standards (8.11, 8.13, and 8.14) to protect the SCF, ADC, or NDC pallets may result in some bundles of Periodicals flats and irregular parcels and Standard Mail flats not being placed on the finest level of pallet possible. Mailers must use PAVE-certified presort software to prepare mailings using bundle reallocation (bundle reallocation is optional, but if performed, it must be done for the complete mailing job).

8.5.2 Required Preparation

The following standards apply to Periodicals, Standard Mail, Parcel Select, and Package Services, except Parcel Select mailed at NDC Presort, ONDC Presort, DSCF, and DDU prices.

* * * * *

[Revise 8.5.2c as follows:]

c. Trays, bundles or parcels that cannot be prepared on a direct pallet must be placed on the appropriate Origin Network Distribution Center, Tier 2 Network, Directional Tier 2 Network, Local Surface Transport or Extended Surface Network pallet, when the volume reaches 150 pounds, or three layers of trays, for any pallet level. Mailers may optionally make pallets with less than 150 pounds or 36 linear feet of trays for these pallet levels. Mailers choosing not to make optional pallets, or unable to palletize, must prepare bundles in flat trays or approved alternate containers under applicable preparation standards.

8.5.3 Minimum Load

The following minimum load standards apply to mail prepared on pallets:

a. For Periodicals, Standard Mail, Parcel Select, and Package Services (except for Parcel Select mailed at NDC Presort, ONDC Presort, DSCF, and DDU prices):

[Revise 8.5.3a1 as follows:]

1. In a single mailing, the minimum load per pallet is 250 pounds of bundles, parcels, or approved alternate containers, except as provided in items 2 through 4 below. When preparing letter trays on pallets, the minimum load is 36 linear feet or three layers of trays, except as provided in item 3 below.

* * * * *

[Add a new 8.5.3a6 as follows:]

6. There is no minimum load for Origin Entry 3–Digit, Origin Network Distribution Center, Tier 2 Network, Directional Tier 2 Network, Local Surface Transport or Extended Surface Network pallets.

* * * * *

8.5.5 Maximum Load

[Revise the first sentence of 8.5.5 as follows:]

The maximum weight (mail and pallet) is 2,200 pounds. The maximum height of a single pallet (mail and pallet) is 77 inches for bundles, parcels, approved alternate containers, or pallet boxes, or 77 inches or 12 layers of trays (whichever occurs first) for letter trays.

* * *

8.5.6 Mail on Pallets

These standards apply to mail on pallets:

[Revise 8.5.6a as follows:]

a. Pieces in trays, bundles, and approved alternate containers must be prepared under the standards for the class of mail and price claimed.

* * * * *

[Delete 8.5.6g in its entirety and renumber current 8.5.6h and i as the new 8.5.6g and h.]

* * * * *

8.5.9 Address Visibility

This standard does not apply to the following:

* * * * *

[Revise 8.5.9b and c as follows:]

b. Bundles placed in or on 5-digit or 5-digit scheme (L001) approved alternate containers or pallets.

c. Bundles placed in carrier route and 5-digit carrier routes approved alternate containers.

* * * * *

[Revise title and text of 8.5.12 as follows:]

8.5.12 Alternate Containers

All mailers are required to palletize when possible. Mail that is not palletized (*e.g.* the mailer is physically unable to palletize, the USPS acceptance location is unable to accept pallets, or the bundles do not meet the machinability standards in 8.5.7 through 8.5.11) must be prepared in flat trays or approved alternate containers under the standards for the price claimed. For Periodicals, the mailer must separately place bundles of each publication, which are not palletized, into flat trays or approved alternate containers. Alternate containers that are not palletized must be bedloaded. Alternate containers not placed on pallets may be presented with the palletized mail (and reported on the same postage statement) if separated from the palletized portion of the mailing.

* * * * *

8.8 Basic Uses

These types of mail may be palletized:

* * * * *

[Revise items 8.8b and c as follows:]

b. Bundles of nonletter-size mail not prepared in approved alternate containers.

c. Bundles or parcels in approved alternate containers or in sacks (5-digit or 5-digit scheme only).

* * * * *

8.9 Bundles on Pallets

8.9.1 Applicability

[Revise 8.9.1 as follows:]

Presort bundles of Periodicals, Standard Mail, and Package Services flats and irregular parcels must be placed directly on pallets under 8.9.2 through 8.9.5 and 8.10. Mail that cannot be placed on pallets (*e.g.* the mailer is physically unable to palletize, the USPS acceptance location is unable to accept pallets, or the bundles do not meet the machinability standards in 8.5.7 through 8.5.11) must be prepared in flat trays or approved alternate containers under the applicable standards. Flat trays or alternate containers that contain any remaining bundles after all pallets are prepared may be presented with the palletized portion of the mailing job (and, subject to 8.16.5, reported on the same postage statement) if the trayed or containerized portion is presented separately from the palletized portion.

* * * * *

8.9.5 Bound Printed Matter

Bound Printed Matter on pallets must be bundled as follows:

* * * * *

b. Presorted and Carrier Route Bound Printed Matter:

[Revise 8.9.5b1 as follows:]

1. Only individual pieces of flats or irregular parcels that weigh less than 10 pounds each may be prepared as bundles on pallets. Presorted pieces that weigh 10 or more pounds each must be prepared and palletized as machinable parcels under 8.10.4. Carrier route pieces that individually weigh 10 or more pounds each must either be prepared and palletized as machinable parcels under 8.10.4, and qualify for Presorted prices or be prepared in alternate containers under 365.6.0 for flats and 465.6.0 for parcels and qualify for carrier route prices.

* * * * *

8.10 Pallet Presort and Labeling

* * * * *

[Revise title of 8.10.2 as follows:]

8.10.2 Periodicals—Bundles, Trays, or Alternate Containers

[Revise the fourth and last sentence of the introductory paragraph of 8.10.2 as follows:]

* * * For mailings of letter trays or bundles of flat-size pieces in approved alternate containers on pallets, pallet preparation begins with 8.10.2e. * * * For pieces meeting the standards in 707.26.0, mailers may prepare the nonpalletized (residual) portion of a mailing in flat trays or approved alternate containers under 10.0.

* * * * *

[Revise the opening paragraph of items 8.10.2e and f as follows:]

e. *5-digit carrier routes, required,* except for trays; permitted for bundles, alternate containers, and trays. Pallet must contain only carrier route mail for the same 5-digit ZIP Code. Labeling:

* * * * *

f. *5-digit, required,* except for trays; permitted for bundles, alternate containers, and trays. Pallet must contain only automation price and/or Presorted price mail for the same 5-digit ZIP Code or the same 5-digit scheme under L007 (for automation- compatible flats only under 301.3.0). Five-digit scheme bundles are assigned to pallets according to the "label to" 5-digit ZIP Code in L007. Labeling:

* * * * *

[Revise the opening paragraph of items 8.10.2h through j as follows:]

h. *SCF, required,* permitted for bundles, alternate containers, and trays. Pallet may contain carrier route, automation price, and/or Presorted price mail for the 3-digit ZIP Code groups in L005. Mailers may place origin mixed ADC (OMX) containers on origin SCF pallets. Labeling:

* * * * *

i. *ADC, required,* permitted for bundles, alternate containers, and trays. Pallet may contain carrier route, automation price, and/or Presorted price mail for the 3-digit ZIP Code groups in L004. Labeling:

* * * * *

j. *Local Surface Transport;* required; no minimum, permitted for Origin Mixed ADC (OMX) trays, bundles and alternate containers. Pallet may contain carrier route, automation price, and/or presorted price mail. Labeling:

* * * * *

[Revise 8.10.2k as follows:]

k. *Extended Surface Network;* required; no minimum; permitted for bundles, trays and alternate containers. Pallet may contain carrier route, automation, and/or presorted mail. Pallets must not contain origin mixed ADC (OMX) trays, bundles or alternate containers. labeling:

1. Line 1: "MXD" followed by L009, Column B for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PER" or "NEWS," as applicable; followed by "FLTS," "IRREG," or "LTRS," as applicable; followed by "BARCODED" (or "BC") if pallet contains automation price mail; followed by "NONBARCODED" (or "NBC") if pallet contains carrier route and/or Presorted price mail; followed by "WKG."

* * * * *

[Revise title of 8.10.3 as follows:]

8.10.3 Standard Mail—Bundles, Trays, or Alternate Containers

[Revise the third and fourth sentences of 8.10.3 as follows:]

* * * For irregular parcels, use this preparation only for pieces in carrier route bundles or bundles placed in approved alternate containers. Palletize unbundled or uncontainerized irregular parcels under 8.10.8. * * *

* * * * *

[Revise the opening paragraph of items 8.10.3b and c as follows:]

b. *5-digit carrier routes, required except for trays,* permitted for bundles, trays and approved alternate containers. Pallet must contain only carrier route mail for the same 5-digit ZIP Code. Labeling:

* * * * *

c. *5-digit, required except for trays,* permitted for bundles, trays and approved alternate containers. Pallet must contain only automation price and/or Presorted price mail for the same 5-digit ZIP Code or same 5-digit scheme. 5-digit scheme bundles and alternate containers are assigned to 5-digit pallets according to the "label to" 5-digit ZIP Code. Labeling:

* * * * *

[Revise the first sentence of the opening paragraph of 8.10.3e as follows:]

e. SCF, required, permitted for bundles, trays, and approved alternate containers. * * *

* * * * *

[Revise the opening paragraph of 8.10.3f as follows:]

f. *ASF, required unless bundle reallocation used under 8.13,* permitted for bundles, trays, and approved alternate containers. Pallet may contain carrier route, automation price, and/or Presorted price mail for the 3-digit ZIP Code groups in L602. ADC bundles, trays, or alternate containers are assigned to pallets according to the "label to" ZIP Code in L004 as appropriate. AADC trays are assigned to pallets according to the "label to" ZIP Code in L801. Labeling:

* * * * *

[Revise 8.10.3g as follows:]

g. *NDC, required, permitted for bundles, trays, and approved alternate containers.* Required for the *Origin NDC* pallet when volume reaches 150 pounds. Pallet may contain carrier route, automation price, and/or Presorted price mail for the 3-digit ZIP Code groups in L604 (L601 for parcels). ADC bundles, trays, or alternate containers are assigned to pallets according to the "label to" ZIP Code in L004 as appropriate. AADC trays are assigned to pallets according to the "label to" ZIP Code in L801. Labeling:

1. Line 1: L604 (L601 for parcels).

2. Line 2: For flats and irregular parcels, "STD" followed by "FLTS" or "IRREG," as applicable; followed by "NDC"; followed by "BARCODED" (or "BC") if pallet contains automation price mail; followed by "NONBARCODED" (or "NBC") if pallet contains carrier route and/or Presorted price mail. For letters, "STD LTRS NDC"; followed by "BC" if pallet contains barcoded letters; followed by "MACH" if pallet contains machinable letters; followed by "MAN" if pallet contains nonmachinable letters.

[Delete 8.10.3h in its entirety and add new 8.10.3h and i as follows:]

h. *Tier 2 Network,* required, required, permitted for bundles, trays and approved alternate containers. Pallet may contain carrier route, automation, and/or Presorted price mail. Labeling:

1. Line 1: L604 (L603 for parcels), Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: For flats and irregular parcels, "STD" followed by "FLTS" or "IRREG," as applicable; followed by "BARCODED" (or "BC") if pallet contains automation price mail; followed by "NONBARCODED" (or "NBC") if pallet contains carrier route and/or Presorted price mail; followed by "WKG." For letters, "STD LTRS"; followed by "BC" if pallet contains barcoded letters; followed by "MACH" if pallet contains machinable letters; followed by "MAN" if pallet contains nonmachinable letters; followed by "WKG."

i. *Directional Tier 2 Network (required for specified acceptance locations);* if the origin NDC of the acceptance and/or induction facility is Chicago, Cincinnati or Saint Louis, use Labeling List 604 (L603 for parcels) to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List 604 (L603 for parcels) to separate the remaining mail into two north or south directionally-based containers; required; permitted for bundles, trays and approved alternate containers. Pallet may contain carrier route, automation, and/or Presorted price mail. Labeling:

1. Line 1: L604 (L603 for parcels), Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: For flats and irregular parcels, "STD" followed by "FLTS" or "IRREG," as applicable; followed by "BARCODED" (or "BC") if pallet contains automation price mail; followed by "NONBARCODED" (or "NBC") if pallet contains carrier route and/or Presorted price mail; followed by "WKG." For letters, "STD LTRS"; followed by "BC" if pallet contains barcoded letters; followed by "MACH" if pallet contains machinable letters; followed by "MAN" if pallet contains nonmachinable letters; followed by "WKG."

[Revise title of 8.10.4 as follows:]

8.10.4 Package Services Flats—Bundles or Alternate Containers

[Revise the sixth sentence of 8.10.4 as follows:]

* * * For mailings of alternate containers placed on pallets, pallet preparation begins with 8.10.4b. * * *

* * * * *

[Revise the opening paragraph of items 8.10.4b and c as follows:]

b. *5-digit carrier routes, required,* permitted for bundles and approved alternate containers. Pallet must contain only carrier route mail for the same 5-digit ZIP Code. Labeling:

* * * * *

c. *5-digit, required,* permitted for bundles and approved alternate containers. Pallet must contain only Presorted price mail with or without a barcode for the same 5-digit ZIP Code or same 5-digit scheme under L007 (for automation-compatible flats only under 301.3.0). Five-digit scheme bundles are assigned to pallets according to the "label to" 5-digit ZIP Code in L007. Labeling:

* * * * *

[Revise the opening paragraph of items 8.10.4e through f as follows:]

e. *SCF, required,* permitted for bundles and approved alternate containers. Pallet may contain carrier route and/or Presorted mail for the 3-digit ZIP Code groups in L005. Labeling:

* * * * *

f. *ASF, required,* permitted for bundles and approved alternate containers. Pallet may contain carrier route and/or Presorted price mail with or without a barcode for the 3-digit ZIP Code groups in L602. ADC bundles or alternate containers are assigned to pallets according to the "label to" ZIP Code in L004. At the mailer's option, appropriate mixed ADC bundles or alternate containers may be sorted to ASF pallets according to the "label to" ZIP Code in L010. All mixed ADC bundles and alternate containers must contain only pieces destinating within the ASF as shown in Exhibit 6.2.3. Labeling:

* * * * *

[Revise 8.10.4g as follows:]

g. *NDC, required,* permitted for bundles and approved alternate containers. Required for the *Origin NDC* pallet when volume reaches 150 pounds. Pallet may contain carrier route and/or Presorted price mail with or without a barcode for the 3-digit ZIP Code groups in L601. ADC bundles or alternate containers are assigned to pallets according to the "label to" ZIP Code in L004. At the mailer's option, appropriate mixed ADC bundles or alternate containers may be sorted to NDC pallets according to the "label to" ZIP Code in L010. All mixed ADC bundles and alternate containers must contain only pieces destinating within the NDC as shown in Exhibit 6.2.3. Labeling:

1. Line 1: L604.

2. Line 2: "PSVC FLTS NDC"; followed by "BARCODED" (or "BC") if pallet contains Presorted price mail with a barcode; followed by "NONBARCODED" (or "NBC") if pallet contains carrier route and/or Presorted price mail without a barcode.

[Delete current 8.10.4h in its entirety and add new 8.10.4h and i as follows:]

h. *Tier 2 Network,* required, permitted for trays, bundles and approved alternate containers. Pallet may contain carrier route and/or Presorted price mail. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office Column B, for NDC serving

2. Line 2: "PSVC FLTS WKG."

i. *Directional Tier 2 Network (required for specified acceptance locations);* if the origin NDC of the acceptance and/or induction facility is Chicago, Cincinnati or Saint Louis, use L603, Column B, to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use L603, Column B, to separate the remaining mail into two north or south directionally-based containers; required; permitted for trays, bundles and approved alternate containers. Pallet may contain carrier route and/or Presorted price mail. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office

2. Line 2: "PSVC FLTS WKG."

[Revise title of 8.10.5 as follows:]

8.10.5 Package Services Irregular Parcels—Bundles or Alternate Containers

[Revise the sixth sentence of 8.10.5 as follows:]

* * * For mailings of approved alternate containers placed on pallets, pallet preparation begins with 8.10.5e. * * *

* * * * *

[Revise the opening paragraph of items 8.10.5e and f as follows:]

e. *5-digit carrier routes, required,* permitted for bundles and approved alternate containers. Pallet must contain only carrier route mail for the same 5-digit ZIP Code. Labeling:

* * * * *

f. *5-digit, required,* permitted for bundles and approved alternate containers. Pallet must contain only Presorted price mail for the same 5-digit ZIP Code. Labeling:

* * * * *

[Revise the opening paragraph of items 8.10.5h through j as follows:]

h. *SCF, required,* permitted for bundles and approved alternate containers. Pallet may contain carrier route and/or Presorted price mail for the 3-digit ZIP Code groups in L005. Labeling:

* * * * *

i. *ASF, required,* permitted for bundles and approved alternate containers. Pallet may contain carrier route and/or Presorted price mail for the 3-digit ZIP Code groups in L602. ADC trays, bundles or alternate containers are assigned to pallets according to the "label to" ZIP Code in L004. At the mailer's option, appropriate mixed ADC bundles or alternate containers may be sorted to ASF pallets according to the "label to" ZIP Code in L010. All mixed ADC bundles and alternate containers must contain only pieces destinating within the ASF as shown in Exhibit 6.2.3. Labeling:

* * * * *

j. *NDC, required,* permitted for bundles and approved alternate containers. No minimum for the *Origin NDC* pallet. Pallet may contain carrier route and/or Presorted price mail for the 3-digit ZIP Code groups in L601. ADC (L004) bundles or approved alternate containers are assigned to pallets according to the "label to" ZIP Code in L004. At the mailer's option, appropriate mixed ADC bundles or alternate containers may be sorted to NDC pallets according to the "label to" ZIP Code in L010. All mixed ADC bundles and alternate containers must contain only pieces destinating within the NDC as shown in Exhibit 6.2.3. Labeling:

* * * * *

[Delete current 8.10.5k in its entirety and add new items 8.10.5k and l as follows:]

k. *Tier 2 Network,* required, permitted for bundles and approved alternate containers. Pallet may contain carrier route and/or Presorted price mail. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PSVC IRREG WKG."

l. *Directional Tier 2 Network (required for specified acceptance locations);* if the origin NDC of the acceptance and/or induction facility is Chicago, Cincinnati or Saint Louis, use L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use L603 to separate the remaining mail into two north or south directionally-based containers; required; permitted for bundles and approved alternate containers.

Pallet may contain carrier route and/or Presorted price mail. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the

3-digit ZIP Code prefix of entry Post Office

2. Line 2: "PSVC IRREG WKG."

8.10.6 Package Services, Parcel Select

* * * Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6.

* * * * *

[Revise the opening paragraph of 8.10.6d as follows:]

d. NDC, required. Pallets must contain only parcels or NFMs for the 3-digit ZIP Code groups in L601. Labeling:

* * * * *

[Delete current 8.10.6e in its entirety and add new items 8.10.6e and f as follows:]

e. *Tier 2 Network,* required, no minimum. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD MACH WKG," "STD NFM MACH WKG," or "PSVC MACH WKG," as applicable.

f. *Directional Tier 2 Network (required for specified acceptance locations);* if the origin NDC of the acceptance and/or induction facility is Chicago, Cincinnati or Saint Louis, use L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use L603 to separate the remaining mail into two north or south directionally-based containers; required. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD MACH WKG," "STD NFM MACH WKG," or "PSVC MACH WKG," as applicable.

8.10.7 Standard Mail Machinable Parcels and Not Flat-Machinable Pieces Weighing 6 Ounces or More

* * * Pallets must be labeled according to Line 1 and Line 2 information listed below and under 8.6.

* * * * *

[Delete current 8.10.7f in its entirety and add new items 8.10.6 f and g as follows:]

f. *Tier 2 Network,* required; no minimum. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD MACH WKG" or "STD NFM MACH WKG" as applicable.

g. *Directional Tier 2 Network (required for specified acceptance locations);* if the origin NDC of the acceptance and/or induction facility is Chicago, Cincinnati or Saint Louis, use L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use L603 to separate the remaining mail into two north or south directionally-based containers; required; no minimum. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office

2. Line 2: "STD MACH WKG" or "STD NFM MACH WKG" as applicable.

8.10.8 Standard Mail Irregular Parcels Weighing 2 Ounces or More

[Revise the first and last sentence of the introductory paragraph of 8.10.8 as follows:]

Mailers who palletize unbundled or uncontainerized irregular parcels must make pallets or pallet boxes when there are 250 pounds or more for the destination levels below for DNDC, DSCF, or DDU prices. * * * Mailers may not prepare tubes, rolls, and similar pieces or pieces that weigh less than 2 ounces on pallets or in pallet boxes, except for pieces in carrier route bundles or in alternate containers under 8.10.3.

* * * * *

[Delete current 8.10.8g in its entirety and add new items 8.10.8g and h as follows:]

g. *Tier 2 Network,* required, no minimum. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD IRREG WKG."

h. *Directional Tier 2 Network (required for specified acceptance locations);* if the origin NDC of the acceptance and/or induction facility is Chicago, Cincinnati or Saint Louis, use L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use L603 to separate the remaining mail into two north or south directionally-based containers; no minimum. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD IRREG WKG."

8.10.9 Standard Mail Not Flat-Machinable Pieces Weighing Less Than 6 Ounces

[Revise the first sentence of the introductory paragraph of 8.10.9 as follows:]

Mailers must prepare uncontainerized pieces on pallets or in pallet boxes when there are 250 pounds or more of NFMs for the destination levels below for DNDC, DSCF, or DDU prices. * * *

* * * * *

[Delete current 8.10.9g in its entirety and add new items 8.10.9g and h as follows:]

g. *Tier 2 Network,* required, no minimum. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office Column B, for NDC serving 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "STD NFM WKG."

h. *Directional Tier 2 Network (required for specified acceptance locations);* if the origin NDC of the acceptance and/or induction facility is Chicago, Cincinnati or Saint Louis, use L603 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use L603 to separate the remaining mail into two north or south directionally-based containers; no minimum. Labeling:

1. Line 1: L603, Column C, based on information for the facility serving the 3-digit ZIP Code prefix of entry Post Office

2. Line 2: "STD NFM WKG."

* * * * *

[Revise title of 8.14 as follows:]

8.14 Pallets of Bundles, Trays, and Alternate Containers

* * * * *

[Revise title of 8.14.3 as follows:]

8.14.3 NDC and Mixed Tier 2 Network Pallets

[Revise the last sentence of 8.14.3 as follows:]

* * * A NDC, tier 2 network or directional tier 2 network (trays and approved alternate containers only) pallet may include pieces that are eligible for the DNDC price and others that are ineligible

* * * * *

[Revise title and text of 8.15 as follows:]

8.15 Approved Alternate Containers

All flat trays, approved alternate containers or sacks remaining after all pallets are prepared may be presented with the palletized mailing (on the same

postage statement) if the containers are set apart from the palletized portion of the mailing.

8.16 Copalletized Flat-Size Pieces—Periodicals or Standard Mail

* * * * *

8.16.2 Periodicals

Additional standards are as follows:

* * * * *

c. * * * Approval is based on the mailer's demonstrated ability to provide documentation meeting these standards:

* * * * *

[Revise 8.16.2c6 as follows:]

6. If a portion of the mailing is placed in approved alternate containers and presented with the copalletized portion, a report by container showing the number of pieces (and copies) at each presort level.

* * * * *

8.18 Parcel Select—Network Distribution Center (NDC) Presort Discount

8.18.1 Machinable Parcels

To qualify for the NDC Presort discount:

[Revise the last sentence of 8.18.1a as follows:]

a. * * * Preparation directly on pallets, or in other containers is not permitted.

* * * * *

8.18.2 Nonmachinable Parcels

To qualify for the NDC Presort discount:

[Revise the last sentence of 8.18.2a as follows:]

a. * * * Preparation in other containers, or directly on pallets, is not permitted.

* * * * *

8.20 Parcel Select DSCF Prices—Parcels on Pallets

8.20.1 Basic Preparation, Parcels on Pallets

[Revise the introductory sentence of 8.20.1 as follows:]

Unless prepared under 8.20.2, in sacks, or approved alternate containers, mail must be prepared for the DSCF price as follows:

* * * * *

c. Overflow. After filling a pallet(s) to a 5-digit scheme, 5-digit, or 3-digit destination, any remaining pieces that do not meet the minimum pallet requirements may be prepared in one or both of the following ways:

[Revise text of 8.20.1c1 as follows:]

1. Placed in 5-digit scheme or 5-digit, overflow sacks, flat trays or approved alternate containers; or in or 3-digit flat trays or approved alternate containers (no minimum number of pieces per sack, tray or container); that are labeled in accordance with the 5-digit scheme, 5-digit, or 3-digit containerization requirements for the DSCF price in 455.4.2. Overflow pieces sacked, trayed or containerized in this manner are eligible for the DSCF prices.

* * * * *

[Revise 8.20.1g as follows:]

g. Separation. If sacks, trays or approved alternate containers prepared under 455 are included in the same mailing as pallets prepared under this section, at the time of acceptance the mailer must separate those sacks, trays or containers that are overflow from the palletized mail from those sacks, trays or containers that were prepared under the provisions of 455.

8.20.2 Alternate Preparation, Parcels on Pallets

DSCF price mailings not prepared under 8.20.1 may be prepared as follows:

[Revise the first sentence of 8.20.2a as follows:]

a. General. All DSCF pieces in the mailing must be sorted to 5-digit scheme, 5-digit, or 3-digit destinations under 8.20.2 (i.e., mail prepared under 8.20.1 and mail prepared under 455.4.2 must not be included in a mailing prepared under 8.20.2). * * *

* * * * *

c. Overflow. After filling pallets to a 5-digit scheme, 5-digit, or 3-digit destination, any remaining pieces that do not meet the minimum pallet requirements may be prepared in one or both of the following ways:

[Revise 8.20.2c1 as follows:]

1. Placed in 5-digit scheme or 5-digit, overflow sacks, flat trays or approved alternate containers; or in or 3-digit flat trays or approved alternate containers (no minimum number of pieces per sack, tray or container); that are labeled in accordance with the 5-digit scheme, 5-digit, or 3-digit containerization requirements for the DSCF price in 455.4.2. Overflow pieces sacked, trayed or containerized in this manner are eligible for the DSCF prices.

* * * * *

[Revise the last sentence of 8.20.2g as follows:]

g. Documentation. * * * This documentation must not include: Pieces prepared in overflow sacks, trays or alternate containers at the DSCF prices, pieces prepared on overflow pallets at the DNDC prices, or pieces claimed at any other price in the mailing.

8.20.3 5-Digit ZIP Codes for Which Pallets May Not Be Prepared

[Revise the last sentence of 8.20.3 as follows:]

* * * If a facility cannot handle pallets, the DSCF price is not applicable unless the mail can be prepared under the containerization requirements in 455.4.2.

[Revise title of 8.21 as follows:]

8.21 Parcel Select DSCF Prices—Containers on Pallets

[Revise the third sentence of the introductory paragraph of 8.21 as follows:]

* * * See 8.20.1g for requirements concerning separation of sacks, trays or approved alternate containers under 455.4.2 from sacks, trays or alternate containers prepared under 8.20.1. * * *

* * * * *

[Revise title of 9.0 as follows:]

9.0 Combining Bundles of Automation and Nonautomation Flats in Trays and Alternate Containers

* * * * *

9.2 Periodicals

9.2.1 Basic Standards

[Revise the introductory paragraph of 9.2.1 as follows:]

Bundles of flat-size pieces in a machinable barcoded price mailing must be cotrayed, or combined in approved alternate containers, with bundles of flat-size pieces in a machinable nonbarcoded mailing under the following conditions:

* * * * *

[Revise items 9.2.1b through f as follows:]

b. The machinable barcoded mailing must meet the eligibility criteria in 707.14.0, except that the traying and documentation criteria in 9.2.1, 9.2.3, and 9.2.4 must be met rather than the traying and documentation criteria in 707.25.0.

c. The machinable nonbarcoded mailing must meet the eligibility criteria in 707.12.0, except that the traying and documentation criteria in 9.2.1, 9.2.3, and 9.2.4 must be met rather than the criteria in 707.25.0.

d. The bundles must be sorted into the same trays or approved alternate containers under 9.2.3 and 9.2.4.

e. A complete postage statement(s) must accompany each mailing job prepared under these procedures. Standardized documentation under 708.1.0 must also be submitted with each cotrayed mailing job that describes for each tray sortation level the number of pieces qualifying for each applicable price.

f. Barcoded tray labels under 708.6.0 must be used to label trays or containers.

* * * * *

9.2.3 Bundles With Fewer Than Six Pieces

[Revise the second sentence of 9.2.3 as follows:]

* * * These low-volume bundles may be placed in 5-digit, 3-digit, and SCF trays or alternate containers that contain at least 24 pieces or on 5-digit, 3-digit, or SCF pallets. * * *

[Revise title of 9.2.4 as follows:]

9.2.4 Tray Preparation and Labeling

[Revise the introductory paragraph of 9.2.4 as follows:]

Machinable barcoded price and machinable nonbarcoded price bundles must be presorted together into trays (cotrayed), or combined in approved alternate containers in the sequence listed below. Trays or containers must be labeled under 9.2.4a through g for Lines 1 and 2 and 707.21.0 for other tray label criteria.

[Revise 9.2.4a as follows:]

a. *5-digit/scheme,* required; scheme sort required only for pieces meeting the criteria in 301.3.0; 24-piece minimum, fewer pieces not permitted; labeling:

1. Line 1: For 5-digit scheme trays, sacks or containers, use L007, Column B. For 5-digit trays, sacks or containers, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: "PER" or "NEWS" as applicable and, for 5-digit scheme trays or containers, "FLT 5D SCH BC/NBC"; for 5-digit trays or containers, "FLT 5D BC/NBC."

* * * * *

[Revise the opening paragraph of 9.2.4f as follows:]

f. *Local Surface Transport,* required, required for any remaining pieces for destinations in L201, Column B, corresponding to the origin ZIP Code in Column A. There is no minimum for the number of pieces in the tray or authorized container, but bundles of fewer than six pieces at 5-digit, 3-digit, and ADC bundle levels are not permitted.

* * * * *

[Revise the opening paragraph of 9.2.4g as follows:]

g. *Extended Surface Network,* required, no minimum, except that bundles of fewer than six pieces at 5-digit, 3-digit, and ADC bundle levels are not permitted. Labeling:

* * * * *

9.2.5 Optional Tray Preparation—Machinable Flat-Size Pieces

[Revise the first sentence of 9.2.5 as follows:]

As an option, mailers may place unbundled and bundled machinable pieces meeting the criteria in 301.3.0 in flats trays (see 707.20.4). * * *

* * * * *

9.3 Standard Mail

9.3.1 Basic Standards

[Revise the introductory sentence of 9.3.1 as follows:]

Bundles of flats in an automation mailing must be cotrayed or placed in approved alternate containers with bundles of flats in a Presorted mailing under the following conditions:

* * * * *

[Revise items 9.3.1c and d as follows:]

c. The automation mailing must meet the eligibility criteria in 343.7.0, except that the traying and documentation criteria in 9.3.1, 9.3.4, and 9.3.5 must be met rather than the criteria in 345.7.0.

d. The Presorted mailing must meet the eligibility criteria in 343.2.0 and 343.3.0, except that the traying and documentation criteria in 9.3.1, 9.3.4, and 9.3.5 must be met rather than the criteria in 345.5.0.

[Revise the second sentence of 9.3.1e as follows:]

e. * * * The prices for pieces in the Presorted price mailing are based on the number of pieces in the bundle and the level of tray or alternate container in which they are placed under 343.3.6 and 343.3.7.

* * * * *

[Revise 9.3.1g as follows:]

g. The bundles prepared from the automation mailing and the bundles prepared from the Presorted mailing must be sorted into the same trays or alternate containers as described in 9.3.4 and 9.3.5.

[Revise the second sentence of 9.3.1h as follows:]

h. * * * In addition to the applicable postage statement, standardized documentation under 708.1.0 must be submitted with each cotrayed mailing job that describes for each tray or container sortation level the number of pieces qualifying for each automation price and the number of pieces qualifying for each Presorted price.

[Revise 9.3.1i as follows:]

i. Barcoded tray labels under 708.6.0 must be used to label trays or alternate containers.

* * * * *

[Revise title and text of 9.3.4 as follows:]

9.3.4 Traying or Containerization Under 125-Piece or 15-Pound Rules

When the minimum quantity of 125 pieces or 15 pounds of mail is specified for a tray or authorized alternative container sortation level in 9.3.5, the provisions of 345.7.4.2 apply.

[Revise title of 9.3.5 as follows:]

9.3.5 Tray Preparation and Labeling

[Revise the introductory paragraph of 9.3.5 as follows:]

Presorted and automation bundles prepared under 9.3.2 and 9.3.3 must be presorted together into trays (cotrayed), or placed in authorized alternate containers, in the sequence listed below. Trays or alternate containers must be labeled using 9.3.5a through g for Lines 1 and 2, and 345.4.0 for other tray label criteria.

[Revise 9.3.5a as follows:]

a. *5-digit/scheme,* required; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; 125-piece/15-pound minimum; labeling:

1. Line 1: For 5-digit scheme trays or containers, use L007, Column B. For 5-digit trays or containers, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: For 5-digit scheme trays or containers, "STD FLT 5D SCH BC/NBC"; for 5-digit sacks, "STD FLT 5D BC/NBC."

* * * * *

[Delete current 9.3.5e in its entirety and add new items 9.3.5e through g as follows:]

e. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "STD FLTS NDC BC/NBC."

f. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "STD FLTS BC/NBC WKG."

g. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "STD FLTS BC/NBC WKG."

* * * * *

9.4 Bound Printed Matter

9.4.1 Basic Standards

Bundles of flat-size pieces in a Presorted mailing qualifying for and

claiming the barcode discount under 363.2.0, 363.3.0, and 363.5.0 must be cotrayed, or combined in approved alternate containers, with bundles of presorted flat-size pieces not claiming the barcode discount under the following conditions:

* * * * *

[Revise 9.4.1c and d as follows:]

c. The Presorted barcode-discount mailing must meet the eligibility criteria in 363.2.0, 363.3.0, and 363.5.0, the mail preparation standards in 365.7.0, the traying requirements in 9.4.4, and the documentation criteria in 9.4.1h.

d. The Presorted mailing must meet the eligibility criteria in 363.2.0, 363.3.0, and 363.5.0, the mail preparation standards in 365.5.0, the traying requirements in 9.4.4, and the documentation criteria in 9.4.1h.

* * * * *

[Revise 9.4.1g as follows:]

g. The bundles must be sorted into the same tray or alternate container as described in 9.4.4.

[Revise the second sentence of 9.4.1h as follows:]

h. * * * In addition to the applicable postage statement, standardized documentation under 708.1.0 must be submitted with each cotrayed mailing job that describes for each tray or container sortation level the number of pieces qualifying for the barcode discount and the number of pieces qualifying for each applicable Presorted price.

[Revise 9.3.1i as follows:]

i. Barcoded tray labels under 708.6.0 must be used to label trays or alternate containers.

* * * * *

[Revise title of 9.4.4 as follows:]

9.4.4 Tray Preparation and Labeling

[Revise the introductory paragraph of 9.4.4 as follows:]

Bundles of Presorted pieces qualifying for and claiming the barcode discount and Presorted pieces prepared under 9.4.2 or 9.4.3 must be presorted together in trays (cotrayed), or combined in approved alternate containers, using the following preparation sequence and labeling:

[Revise 9.4.4a as follows:]

a. 5-digit/scheme, required; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; minimum 20 addressed pieces; labeling:

1. Line 1: For 5-digit scheme trays or containers, use L007, Column B. For 5-digit trays or containers, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: For 5-digit scheme trays or containers, "PSVC FLT 5D SCH BC/NBC"; for 5-digit trays or containers, "PSVC FLT 5D BC/NBC."

[Revise the opening paragraph of item b as follows:]

b. 3-digit, required, except for optional bundles with 3-digit ZIP Code prefixes indicated by an "N" in L002, when optional SCF trays or containers are prepared; minimum 20 addressed pieces; labeling:

* * * * *

[Delete current 9.4.4e in its entirety and add new items 9.4.4e through g as follows:]

e. *Origin Network Distribution Center (NDC) Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "PSVC FLTS NDC BC/NBC."

f. *Tier 2 Network* (required); no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "PSVC FLTS BC/NBC WKG."

g. *Tier 2 Network (required for specified acceptance locations);* if the origin NDC is Chicago, Cincinnati or Saint Louis, use Labeling List L604 to separate the remaining mail into two east or west directionally-based containers; if the origin NDC is San Francisco, use Labeling List L604 to separate the remaining mail into two north or south directionally-based containers; no minimum; labeling:

1. Line 1: L604, Column C.

2. Line 2: "PSVC FLTS BC/NBC WKG."

[Revise title of 705.10 as follows:]

10.0 Merging Bundles of Flats on Pallets or in Trays Using the City State Product

10.1 Periodicals

10.1.1 Basic Standards

[Revise the introductory paragraph of 10.1.1 as follows:]

Carrier route bundles in a carrier route mailing may be placed on the same pallet or in the same tray or approved alternate container as 5-digit bundles from a machinable barcoded mailing and 5-digit bundles from a machinable nonbarcoded mailing (including pieces cobundled under 11.0) under the following conditions:

[Revise 10.1.1a as follows:]

a. A carrier route mailing must be part of the mailing job, unless cobundled under 11.0 using 5-digit scheme (L007) or 3-digit scheme (L008) bundle preparation, and trayed or placed in alternate containers under 10.1.4.

* * * * *

[Revise the first sentence of 10.1.1c as follows:]

c. Pieces in the machinable price mailing must meet the flats criteria in 301.3.0. * * *

* * * * *

[Revise 10.1.1e through j as follows:]

e. Carrier route bundles may be copalletized, cotrayed in combined in approved alternate containers with machinable barcoded 5-digit bundles, machinable nonbarcoded 5-digit bundles, and cobundled 5-digit bundles only for those 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product indicating eligibility for such copalletization or cotraying. Containers of mail sorted in this manner are called "merged 5-digit" pallets or trays. Containers of mail sorted in this manner for which scheme (L001) sortation is also performed are called "merged 5-digit scheme" pallets or trays. Pieces in 5-digit scheme (L007) bundles may not be placed in merged 5-digit containers.

f. If sortation under this section is performed, merged 5-digit pallets, trays or approved alternate containers must be prepared for all 5-digit ZIP Codes with an "A" or "C" indicator in the City State Product that permits such preparation when there is enough volume for the 5-digit ZIP Code to prepare such a tray or alternate container under 10.1.4 or such a pallet under 10.1.5. In addition, all possible merged 5-digit scheme trays or containers must be prepared under 10.1.4, or all possible merged 5-digit scheme and 5-digit scheme pallets must be prepared under 10.1.5.

g. For mailings prepared in trays or approved alternate containers, mailers may not combine firm bundles and 5-digit scheme pieces in 5-digit scheme bundles or in 5-digit scheme trays or containers. Firm bundles must be placed in a separate individual 5-digit tray or container under 10.1.4g to maintain 5-digit price eligibility. Mailers may combine firm bundles with 5-digit scheme, 3-digit scheme, and other presort destination bundles in carrier route, 5-digit, 3-digit, SCF, ADC, and mixed ADC trays or containers. Only an In-County firm bundle can contribute toward the six-piece minimum for price eligibility.

h. The bundles from each separated mailing must be sorted together into trays or approved alternate containers (cotrayed) under 10.1.4 or on pallets (copalletized) under 10.1.5 using presort software that is PAVE-certified.

i. A complete, signed postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared

under these procedures. In addition to the postage statement(s), documentation prepared by PAVE-certified software must be submitted with each cotrayed or copalletized mailing job that describes for each tray or container sortation level and tray or container, or each pallet sortation level and pallet, the number of pieces qualifying for each applicable price.

j. Barcoded tray labels under 708.6.0 must be used to label trays or alternate containers.

10.1.2 Bundle Preparation

Bundles must be prepared as follows:

[Revise the first sentence of 10.1.2a as follows:]

a. *Trayed mailings, or mailings prepared in approved alternate containers.* * * *

* * * * *

10.1.3 Bundles With Fewer Than Six Pieces

[Revise the last sentence of the introductory paragraph of 10.1.3 as follows:]

* * * Low-volume bundles are permitted only when they are prepared on pallets, trayed or placed in approved alternate containers as follows:

a. Place low-volume carrier route, 5-digit, 3-digit scheme, and 3-digit bundles in only the following containers:

[Revise 10.1.3a1 through a3 as follows:]

1. Carrier route, merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, 5-digit carrier routes, 5-digit, 3-digit, and SCF trays or alternate containers that contain at least 24 pieces.

2. Merged 3-digit trays or alternate containers that contain at least one six-piece carrier route bundle.

3. Origin/entry SCF trays or alternate containers.

* * * * *

[Revise 10.1.3b as follows:]

b. Place low-volume 5-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF trays or alternate containers that contain at least 24 pieces, or in origin/entry SCF trays or alternate containers, or on 3-digit or SCF pallets, as appropriate.

[Revise title of 10.1.4 as follows:]

10.1.4 Tray Preparation and Labeling

[Revise the introductory paragraph of 10.1.4 as follows:]

Mailers must prepare trays or approved alternate containers for the individual carrier route and 5-digit bundles from the carrier route, barcoded, and nonbarcoded price mailings in the mailing job in the following manner and sequence. All carrier route bundles must be placed in trays or alternate containers under 10.1.4a through 10.1.4e and 10.1.4h as described below. When sorting is performed under this section, mailers must prepare merged 5-digit scheme trays or alternate containers, 5-digit scheme carrier routes trays or alternate containers, and merged 5-digit trays or alternate containers for all possible 5-digit schemes or 5-digit ZIP Codes as applicable, using L001 (merged 5-digit scheme and 5-digit scheme carrier routes sort only) and the Carrier Route Indicators field in the City State Product when there is enough volume for the 5-digit scheme or 5-digit ZIP Code to prepare such trays or alternate containers under 10.1.4. Mailers must label trays or alternate containers according to the Line 1 and Line 2 information listed below and under 707.20.1. If a mailing job does not contain barcoded pieces and the carrier route pieces and the nonbarcoded pieces are irregular parcel shaped, use "IRREG" for the processing category on the contents line of the label.

* * * * *

[Revise the last two sentences of the opening paragraph of 10.1.4b as follows:]

b. * * * For 5-digit ZIP Code(s) in a scheme that has a "B" or "D" indicator in the City State Product, prepare tray(s) or alternate container(s) under 10.1.4g and 10.1.4h. For 5-digit ZIP Codes not included in a scheme, prepare trays or alternate containers under 10.1.4d through 10.1.4h. Labeling:

* * * * *

[Revise the last sentence of the opening paragraph of 10.1.4c as follows:]

c. * * * Mailers must prepare this tray or container if there are any carrier route bundle(s) for such a scheme. Labeling:

* * * * *

[Revise the second sentence of the opening paragraph of 10.1.4e as follows:]

e. * * * Include only carrier route bundles for a 5-digit ZIP Code remaining after preparing trays or alternate containers under 10.1.4a through 10.1.4d. * * *

* * * * *

[Revise the opening paragraph of items 10.1.4h and i as follows:]

h. *Merged 3-digit.* May contain carrier route bundles, any 5-digit and 5-digit scheme bundles remaining after preparing trays or alternate containers under 10.1.4a through 10.1.4g, and any 3-digit and 3-digit scheme bundles. When preparation of this tray level is permitted, mailers must prepare a tray or alternate container if there are any remaining carrier route bundles for the 3-digit area. Required with at least one six-piece carrier route bundle. Must contain at least one carrier route bundle for the 3-digit area, or a minimum of 24 pieces. Labeling:

* * * * *

i. *SCF through extended surface network.* Any 5-digit scheme and 5-digit bundles remaining after preparing trays or alternate containers under 10.1.4a through 10.1.4h and all 3-digit, 3-digit scheme, ADC, origin mixed ADC, and mixed ADC bundles must be trayed or placed in alternate containers and labeled under 9.2 for cotraying of barcoded and nonbarcoded bundles, except if there are no barcoded bundles in the mailing job, tray or place in an alternate container and label under 707.22.6, or if there are no nonbarcoded price bundles in the mailing job, tray or containerize and label under 707.25.4.

* * * * *

10.2 Standard Mail

10.2.1 Basic Standards

[Revise the introductory paragraph of 10.2.1 as follows:]

Carrier route bundles from a carrier route mailing may be placed on the same pallet, in the same tray or in an approved alternate container as 5-digit bundles from an automation mailing and 5-digit bundles from a Presorted mailing (including pieces cobundled under 11.0) under the following conditions:

[Revise 10.2.1a as follows:]

a. A carrier route mailing must be part of the mailing job, unless cobundled under 11.0 utilizing 5-digit scheme (L007) or 3-digit scheme (L008) bundle preparation and trayed or placed in alternate containers under 10.1.4.

* * * * *

[Revise items 10.2.1e through g as follows:]

e. Carrier route bundles may be copalletized, cotrayed or placed in alternate containers with automation 5-digit bundles, Presorted 5-digit bundles, and cobundled 5-digit bundles only for those 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product indicating eligibility for such copalletization or cotraying. Containers of mail sorted in this manner are called "merged 5-digit" pallets, trays or containers. Containers of mail sorted in this manner for which scheme (L001) sortation is also performed are called "merged 5-digit scheme" pallets, trays or containers. Pieces in 5-digit scheme

(L007) bundles may not be placed in merged 5-digit containers.

f. If sortation under this section is performed, merged 5-digit pallets, trays or alternate containers must be prepared for all 5-digit ZIP Codes with an "A" or "C" indicator in the City State Product that permits such preparation when there is enough volume for the 5-digit ZIP Code to prepare that pallet, tray or container.

g. For trayed or containerized mailings, the prices for pieces in the carrier route mailing are based on the criteria in 343.6.0, the prices for pieces in the automation mailing are applied based on the number of pieces in the bundle and the level of bundle to which they are sorted under 343.7.0, and the prices for pieces in the Presorted price mailing are based on the number of pieces in the bundle and the level of tray or container to which they are sorted under 343.5.0.

* * * * *

[Revise 10.2.1j as follows:]

j. The bundles from each separate mailing must be sorted together into trays or approved alternate containers (cotrayed) under 10.2.3 and 10.2.4 or on pallets (copalletized) under 10.2.5 using presort software that is PAVE-certified.

* * * * *

[Revise 10.2.1m as follows:]

m. Barcoded tray labels under 708.6.0 must be used to label trays or alternate containers.

10.2.2 Bundle Preparation

Bundles must be prepared as follows:

[Revise the first sentence of 10.2.2a as follows:]

a. *Trayed mailings.* * * *

* * * * *

[Revise title and text of 10.2.3 as follows:]

10.2.3 Traying Under 125-Piece or 15-Pound Rules

When the minimum quantity of 125 pieces or 15 pounds of mail is specified for a tray or alternate container sortation level in 10.2.4, the provisions of 345.7.4.2 apply.

[Revise title of 10.2.4 as follows:]

10.2.4 Tray Preparation and Labeling

Mailers must prepare trays or alternate containers in the following manner and sequence. All carrier route bundles must be placed in trays or alternate containers under 10.2.4a through 10.2.4e as described below. Mailers must prepare all merged 5-digit scheme trays or alternate containers, 5-digit scheme carrier routes trays or alternate containers, and merged 5-digit trays or alternate containers that are possible in the mailing based on the volume of mail to the destination using L001 and the Carrier Route Indicators field in the City State Product. Mailers must label trays or alternate containers according to the Line 1 and Line 2 information listed below and under 345.4.0, Tray Labels.

* * * * *

[Revise the third through sixth sentences of the opening paragraph of 10.2.4b as follows:]

b. * * * When preparation of this tray or alternate container level is permitted, a tray or container must be prepared if there are any carrier route bundle(s) for the scheme. If there is not at least one carrier route bundle for any 5-digit destination in the scheme, preparation of this tray or alternate container is required when there are at least 125 pieces or 15 pounds of pieces in 5-digit bundles for any of the 5-digit ZIP Codes in the scheme that have an "A" or "C" indicator in the City State Product (smaller volume not permitted). For a 5-digit ZIP Code(s) in a scheme with a "B" or "D" indicator in the City State Product, prepare tray(s) or alternate container(s) for the automation and Presorted bundles under 10.2.4g and 10.2.4h. For 5-digit ZIP Codes not included in a scheme, prepare trays or alternate containers under 10.2.4d through 10.2.4h. Labeling:

* * * * *

[Revise the opening paragraph of 10.2.4e as follows:]

e. *5-digit carrier routes,* required. Tray or containerize only carrier route bundles for a 5-digit ZIP Code remaining after preparing trays or alternate containers under 10.2.4a through 10.2.4d to this level. May contain only carrier route bundles for any 5-digit ZIP Code that is not part of a scheme listed in L001 and that has a "B" or "D" indicator in the City State Product. No tray or container minimum. Labeling:

* * * * *

[Revise 10.2.4h as follows:]

h. *3-digit through mixed ADC trays or alternate containers.* Any 5-digit scheme and 5-digit bundles remaining after preparing trays or alternate containers under 10.2.4a through 10.2.4g, and all 3-digit, ADC, and Mixed ADC bundles, must be trayed or containerized and labeled according to the applicable requirements under 9.3 for cotraying of automation and Presorted bundles, except if there are no automation bundles in the mailing job, tray or container and label under 345.5.7, or, if there are no Presorted bundles in the mailing job, tray or containerize and label under 345.7.4.3.

10.2.5 Pallet Preparation and Labeling

* * * Mailers must label pallets according to the Line 1 and Line 2 information listed below and under 8.6.

* * * * *

i. NDC, required, may contain carrier route price, automation price, and/or Presorted price bundles.

* * * Labeling:

[Revise 10.2.5i1 as follows:]

1. Line 1: Use L604, Column B.

* * * * *

[Revise the title of 11.0 as follows:]

11.0 Combining Automation and Nonautomation Flats in Bundles

* * * * *

11.2 Periodicals

11.2.1 Basic Standards

[Revise the third sentence of the introductory paragraph of 11.2.1 as follows:]

* * * Mailing jobs (for flats meeting the criteria in 301.3.0) prepared using the 5-digit scheme and/or the 3-digit scheme bundle preparation must be trayed or placed in authorized alternate containers under 9.0 or 10.0 or palletized under 10.0, 12.0, or 13.0. All bundles are subject to the following conditions:

* * * * *

[Revise 11.2.1b as follows:]

b. Mailings prepared in trays or alternate containers must meet the basic standards in 9.0 or 10.0.

* * * * *

11.2.3 Bundles With Fewer Than Six Pieces

[Revise the last sentence of the introductory paragraph of 11.2.3 as follows:]

* * * Low-volume bundles are permitted only when they are trayed, placed in approved alternate containers, or prepared on pallets as follows:

[Revise 11.2.3a and b as follows:]

a. Place low-volume 5-digit and 3-digit bundles in only 5-digit scheme, 5-digit, 3-digit, and SCF trays or alternate containers that contain at least 24 pieces; or in origin/entry SCF trays or alternate containers; or on merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 3-digit, or SCF pallets, as appropriate.

b. Place low-volume 5-digit scheme and 3-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF trays or alternate containers that contain at least 24 pieces, or in origin/entry SCF trays or alternate containers, or on 3-digit or SCF pallets, as appropriate.

11.3 Standard Mail

11.3.1 Basic Standards

[Revise the fourth sentence of the introductory paragraph of 11.3.1 as follows:]

* * * Mailing jobs prepared using the 5-digit scheme and/or 3-digit scheme bundle preparation (for flats meeting the criteria in 301.3.0) must be trayed, placed in approved alternate containers under 10.0, or palletized under 10.0, 12.0, or 13.0. All bundles are subject to the following conditions:

* * * * *

[Revise 11.3.1b as follows:]

b. Mailings prepared in trays or alternate containers must meet the basic standards in 9.0 or 10.0.

* * * * *

11.4 Bound Printed Matter

11.4.1 Basic Standards

* * * * *

[Revise 11.4.1c as follows:]

c. Cobundled pieces must be cotrayed or combined in approved alternate containers under 9.0 or palletized under 8.0.

* * * * *

12.0 Merging Bundles of Flats on Pallets Using a 5% Threshold

12.1 Periodicals

12.1.1 Basic Standards

* * * * *

[Revise 12.1.1g as follows:]

g. Portions of the mailing job that cannot be palletized must be prepared in trays or approved alternate containers.

* * * * *

12.1.5 Pallet Preparation and Labeling

* * * * *

[Revise 12.1.5c as follows:]

c. *5-digit scheme,* not permitted for flats that meet the dimension, weight, and flexibility criteria for automation flats in 301.3.0 (including pieces in merged bundles) and not permitted for trays or alternate containers.

* * * * *

12.2 Standard Mail

* * * * *

12.2.4 Pallet Preparation and Labeling

* * * Mailers must label pallets according to the Line 1 and Line 2 information listed below and under 8.6.

* * * * *

i. NDC, required, may contain carrier route price, automation price, and/or Presorted price bundles. * * *

Labeling:

[Revise 12.2.4i1 as follows:]

1. Line 1: Use L604, Column B.

* * * * *

13.0 Merging Bundles of Flats on Pallets Using the City State Product and a 5% Threshold

13.1 Periodicals

* * * * *

13.1.5 Pallet Preparation and Labeling

* * * * *

[Revise the first sentence of the opening paragraph of 13.1.5c as follows:]

c. *5-digit scheme,* not permitted for flats that meet the dimension, weight, and flexibility criteria for automation flats in 301.3.0 (including pieces in merged bundles) and not permitted for trays or alternate containers. * * *

* * * * *

13.2 Standard Mail

* * * * *

13.2.4 Pallet Preparation and Labeling

* * * Mailers must label pallets according to the Line 1 and Line 2 information listed below and under 8.6.

* * * * *

i. NDC, required, may contain carrier route price, automation price, and/or Presorted price bundles. * * *

Labeling:

[Revise 13.2.4i1 as follows:]

1. Line 1: Use L604, Column B.

* * * * *

21.0 Optional Combined Parcel Mailings

* * * * *

21.3 Mail Preparation

21.3.1 Basic Standards

Prepare combined mailings as follows:

* * * * *

[Revise 21.3.1b as follows:]

b. Mailers must prepare all parcels in trays, approved alternate containers or sacks under 445.5.0, or on pallets, or in pallet boxes under 8.0 to achieve the finest level of sortation.

21.3.2 Combining Standard Mail, Parcel Select, and Package Services Machinable Parcels and NFMs 6 Ounces or More

Prepare and enter combined machinable parcels as shown in the table below:

[Revise the NDC/ASF and Mixed NDC rows under the Origin and DNDC Entry options only in table 21.3.2 as follows:]

Entry	5 Digit/scheme[1]	NDC/ASF (Required)	Mixed NDC (Required)
COMBINED PREPARATION			
Origin	* * *	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—250-lb minimum	Trays or alternate containers—No minimum. Pallets—250-lb minimum.
DNDC	* * *	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—100-lb minimum.	

* * * * *

21.3.3 Combining Standard Mail, Parcel Select, and Package Services Parcels and NFMs 2 Up to 6 Ounces (APPS–Machinable)

Prepare and enter combined APPS-machinable parcels (pieces weighing at least 2 ounces and up to, but not including, 6 ounces that are not tubes, rolls, triangles or similarly irregularly-shaped parcels) as shown in the table below.

[Revise the 3-Digit, ADC, and Mixed ADC columns under the Origin, DNDC, and DNDC rows only in table 21.3.3 as follows:]

Entry	5-Digit/scheme [1]	3-Digit (required)	ADC (Required)	Mixed ADC (Required)
COMBINED PREPARATION				
Origin	* * *	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—250-lb minimum	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—250-lb minimum.	Trays or alternate containers—No minimum. Pallets—250-lb minimum.
DNDC	* * *	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—100-lb minimum.	Trays or alternate containers—10-piece or 20-lb minimum Pallets—100-lb minimum.	
DSCF	* * *	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—100-lb minimum.		

* * * * *

21.3.4 Combining Standard Mail, Parcel Select, and Package Services Irregular Parcels and NFMs Under 2 Ounces (Not APPS-Machinable)

Prepare and enter combined not APPS-machinable parcels as shown in the table below.

[Revise the 3-Digit, ADC, and Mixed ADC columns under the Origin, DNDC, and DNDC rows only in table 21.3.4 as follows:]

Entry	5-Digit/scheme [1]	3-Digit (required)	ADC (Required)	Mixed ADC (Required)
COMBINED PREPARATION				
Origin	* * *	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—250-lb minimum.	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—250-lb minimum.	Trays or alternate containers—No minimum. Pallets—250-lb minimum.
DNDC	* * *	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—100-lb minimum.	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—100-lb minimum.	
DSCF	* * *	Trays or alternate containers—10-piece or 20-lb minimum. Pallets—100-lb minimum.		

* * * * *

23.0 Full-Service Option

23.1 Description

[Revise the third sentence of 23.1 as follows:]

* * * Full-service automation mailings require Intelligent Mail barcodes on mailpieces; Intelligent Mail tray labels on trays or approved alternate containers; and Intelligent Mail container placards on pallets or similar containers (when created).
* * *

* * * * *

23.2 Eligibility Standards

All pieces entered under the full-service automation option must:

* * * * *

[Revise 23.2b as follows:]

b. Be part of a mailing using unique Intelligent Mail tray labels on all trays and approved alternate containers.

* * * * *

23.3 Preparation

* * * * *

23.3.2 Intelligent Mail Tray Labels

[Revise 23.3.2 as follows:]

All trays and approved alternate containers must contain accurately encoded Intelligent Mail tray labels as described in 708.6.5. Mailing documentation, when required, must associate each mailpiece to a corresponding tray or alternate containers if applicable, as described in 22.3.4. Each tray or alternate container must be encoded with a unique serial number. Tray or alternate container serial numbers associated to an individual Mailer ID cannot be duplicated within a 45-day period, regardless of the acceptance location.

23.3.3 Intelligent Mail Container Placards

[Revise the third sentence of 23.3.3 as follows:]

* * * Mailing documentation, when required, must associate each mailpiece (and tray or approved alternate container, if applicable) to a corresponding container as described in 22.3.4, unless otherwise authorized by the USPS. * * *

23.3.4 Electronic Documentation

[Revise the second sentence of 23.3.4 as follows:]

* * * Unless otherwise authorized, documentation must describe how each mailpiece is linked to a uniquely identified tray or sack, if applicable, and how each mailpiece and tray or approved alternate container is linked to

a uniquely identified container (if applicable). * * *

* * * * *

23.4 Additional Standards

* * * * *

23.4.3 Special Standards—Small Volume Mailings

[Revise the last sentence of 23.4.3 as follows:]

* * * Unique mailing serial numbers must be populated in the Postal Wizard entry screen field or in the Mail.XML messages, except that mailers must populate the serial number field of all Intelligent Mail tray labels, and Intelligent Mail container barcodes (when mailings are containerized) with the unique mailing serial number.

707 Periodicals

* * * * *

2.0 Price Application and Computation

2.1 Price Application

* * * * *

2.1.3 Applying In-County Piece Prices

[Revise the last sentence of 2.1.3 as follows:]

* * * Piece prices for automation mailings are based on the bundle level (or tray level for unbundled pieces in trays); piece prices for nonautomation mailings are based on the tray level.

* * * * *

2.1.9 Applying Outside-County Container Prices

[Revise the first sentence of the introductory paragraph of 2.1.9 as follows:]

For Outside-County mail prepared in letter trays, pallets, flat trays, sacks or approved alternate containers, or USPS-approved containers, mailers pay the container price according to the type of container, the presort level of the container, and where the mail is entered. * * * The following additional standards apply:

[Revise items 21.9a through c as follows:]

a. For mailings prepared in letter trays, flat trays, sacks or approved alternate containers, mailers pay the container price for each tray or container based on container level and entry.

b. For mailings prepared on pallets under 705.8.0:

1. For bundles placed directly on pallets, mailers pay the container price for each pallet.

2. For letter trays, flat trays, sacks or approved alternate containers on pallets, mailers pay the container price for each tray or container, and not for the pallets. The container price for each tray or alternate container is based on the tray or alternate container level and where the pallet is entered.

c. For containers with both In-County and Outside-County pieces, mailers do not pay the container price for carrier route, 5-digit carrier routes, and 5-digit/scheme pallets, trays or alternate containers.

* * * * *

12.0 Nonbarcoded (Presorted) Eligibility

* * * * *

12.2 Prices—Outside-County

Outside-County nonbarcoded (Presorted) prices are based on the following criteria (see 2.0 for price application and computation):

* * * * *

[Revise 12.2c as follows:]

c. Container prices are based on the type of container (letter tray, flat tray, sack, alternate container, or pallet), the level of sortation of the container, and where the container is entered.

12.3 Prices—In-County

12.3.1 Five-Digit Prices

5-digit prices apply to:

* * * * *

[Revise 12.3.1b as follows:]

b. Nonletter-size pieces in 5-digit scheme (L007) bundles and 5-digit bundles of six or more addressed pieces each; placed in applicable merged 5-digit scheme (L001) flat trays or alternate containers, merged 5-digit flat trays or alternate containers, 5-digit scheme (L001) flat trays or alternate containers, or 5-digit flat trays or alternate containers; or palletized under 705.8.0 or 705.10.0, 705.12.0, or 705.13.0.

12.3.2 Three-Digit Prices

3-digit prices apply to:

* * * * *

[Revise 12.3.2b as follows:]

b. Nonletter-size pieces in 5-digit scheme (L007), 5-digit, 3-digit scheme (L008) and 3-digit bundles of six or more addressed pieces each, placed in 3-digit flat trays or alternate containers; or 3-digit scheme, and 3-digit bundles of six or more addressed pieces each, prepared under 705.8.0 or 705.10.0, 705.12.0, or 705.13.0.

* * * * *

13.0 Carrier Route Eligibility

* * * * *

13.2 Sorting

13.2.1 Basic Standards

* * * Carrier route prices apply to copies that are prepared in carrier route bundles of six or more addressed pieces each, subject to these standards:

* * * * *

b. *Nonletter-size mailings.* Carrier route prices apply to carrier route bundles that are sorted in one of the following ways:

[Revise 13.2.1b2 and b3 as follows:]

2. Bundles in carrier route, 5-digit scheme carrier routes, 5-digit carrier routes flat trays or alternate containers, or 3-digit carrier routes flat trays or alternate containers under 23.0. Flat trays or alternate containers may be palletized under 705.8.0.

3. Untrayed bundles entered at a destination delivery unit according to preparation standards in 23.4.2 and entry standards in 29.5.5.

* * * * *

13.3 Walk-Sequence Prices

* * * * *

13.3.2 Copies Claimed at Other Prices

[Revise the second sentence of 13.3.2 as follows:]

* * * When presented to the USPS, the trays or alternate containers containing the walk-sequence price copies must be separated from other trays or containers. * * *

* * * * *

14.0 Barcoded (Automation) Eligibility

* * * * *

14.3 Prices—Outside-County

Outside-County barcoded (automation) prices are based on the following criteria (*see* 2.0 for price application and computation):

* * * * *

[Revise 14.3c as follows:]

c. Container prices are based on the type of container (tray, alternate container or pallet), the level of sortation of the container, and where the container is entered.

* * * * *

18.0 General Mail Preparation

* * * * *

18.3 Presort Terms

Terms used for presort levels are defined as follows:

* * * * *

[Revise items 18.3e and f as follows:]

e. *5-digit scheme (bundles, flat trays or alternate containers)* for flats prepared according to 301.3.0: The ZIP

Code in the delivery address on all pieces is one of the 5-digit ZIP Codes processed by the USPS as a single scheme, as shown in L007.

f. *5-digit scheme carrier routes (pallets, flat trays or alternate containers)* for Periodicals flats and irregular parcels: The ZIP Code in the delivery address on all pieces in carrier route bundles is one of the 5-digit ZIP Codes processed by the USPS as a single scheme, as shown in L001.

* * * * *

[Revise 18.3h as follows:]

h. *Merged 5-digit trays:* the carrier route bundles and/or machinable barcoded or nonbarcoded price 5-digit bundles in a flat tray or alternate container are all for a 5-digit ZIP Code that has an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product.

* * * * *

[Revise 18.3j as follows:]

j. *Merged 5-digit scheme tray:* the 5-digit ZIP Codes on pieces in carrier route bundles and/or machinable barcoded or nonbarcoded price 5-digit bundles in a flat tray or alternate container are all for 5-digit ZIP Codes that are part of a single scheme as shown in L001, and the machinable barcoded or nonbarcoded price 5-digit bundles also are for 5-digit ZIP Codes that have an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product.

* * * * *

18.4 Mail Preparation Terms

For purposes of preparing mail:

* * * * *

[Revise 18.4e as follows:]

e. An *approved alternate container* is a container that is authorized by the appropriate USPS official, instead of a flat tray (tub) or pallet, for the handling and transport of bundled flat-size mailpieces or parcels. Alternate containers could include sacks, other USPS-supplied mail transport equipment, or mailer-supplied containers.

* * * * *

[Revise 18.4j as follows:]

j. A *5-digit scheme carrier routes sort* for carrier route price Periodicals flats and irregular parcels (nonletters) prepared as bundles in flat trays or alternate containers, or on pallets yields a 5-digit scheme carrier routes flat tray, sack, alternate container or pallet for those 5-digit ZIP Codes listed in L001 and 5-digit carrier routes flat tray, sack, alternate container or pallet for other areas. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum tray, container or pallet volume, with no further separation by 5-digit ZIP Code required. Flat trays, alternate containers or pallets prepared for a 5-digit scheme carrier routes destination that contain carrier route bundles for only one of the schemed 5-digit areas are still considered to be sorted to 5-digit scheme carrier routes and are labeled accordingly. The 5-digit scheme carrier routes sort is required for carrier route bundles of flat-size and irregular parcel Periodicals. Preparation of 5-digit scheme carrier routes flat trays, alternate containers or pallets must be done for all 5-digit scheme destinations.

* * * * *

[Revise 18.4l as follows:]

l. A *merged 5-digit sort* for Periodicals flats prepared in flat trays or alternate containers yields merged 5-digit flat trays or alternate containers that contain carrier route bundles and/or machinable barcoded and nonbarcoded price 5-digit bundles that are all for a 5-digit ZIP Code that has an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product. The merged 5-digit sort is optional for Periodicals flats. Flat trays or alternate containers prepared for a merged 5-digit destination that contain only a single price level of bundles or that contain only two price levels of bundles are still considered to be merged 5-digit sorted and are labeled accordingly. If preparation of merged 5-digit trays or alternate containers is performed, it must be done for all 5-digit ZIP Code destinations with an "A" or "C" indicator in the Carrier Route Indicators field in the City State Product.

[Revise the second sentence of 18.4m as follows:]

m. * * * The merged 5-digit sort is optional for Periodicals flats in flat trays or alternate containers under 705.10.0.

* * *

[Revise 18.4n as follows:]

n. A *merged 5-digit scheme sort for Periodicals flats prepared in flat trays or alternate containers* yields merged 5-digit scheme trays or alternate containers that contain carrier route bundles and machinable barcoded and nonbarcoded price 5-digit bundles for those 5-digit ZIP Codes that are part of a single scheme as shown in L001. Flat trays or alternate containers prepared for a merged 5-digit scheme destination that contain only a single price level of bundles, or only two price levels of bundles, or bundles for only one of the schemed 5-digit ZIP Codes are still considered to be merged 5-digit scheme sorted and must be labeled accordingly. If preparation of merged 5-digit scheme trays or alternate containers is performed, it must be done for all 5-digit scheme destinations in L001.

* * * * *

[Revise 18.4r as follows:]

r. An *origin 3-digit (or origin 3-digit scheme)* tray/alternate container contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF in whose service area the mail is verified. A separate tray/alternate container may be prepared for each 3-digit ZIP Code (or 3-digit scheme) area. When these separations are made, mailers must segregate trays, sacks or pallets labeled to destinations within the origin SCF from the remainder of the mailing as described in 28.3.

[Revise 18.4s as follows:]

s. An *origin/entry SCF flat tray or alternate container* contains all 5-digit and 3-digit bundles (regardless of quantity) for the SCF in whose service area the mail is verified. At the mailer's option, such a tray or container may be prepared for the SCF area of each entry Post Office. This presort level applies only to nonletter-size Periodicals prepared in flat trays or alternate containers. . When these separations are made, mailers must segregate trays, sacks or pallets labeled to destinations within the origin SCF from the remainder of the mailing as described in 28.3.

* * * * *

[Add a new 18.5 as follows:]

18.5 Required Pallet Preparation

Mailers must prepare pallets under 705.8 when they have reached the minimum load requirements described in 705.8.5.3. If a mailer is unable to palletize, mail must be separated and placed in properly labeled flat trays or approved alternate containers.

19.0 Bundles

* * * * *

19.6 Flat-Size Bundles

Bundles of flat-size pieces must be secure and stable subject to the following:

* * * * *

[Revise 19.6b as follows:]

b. If placed in flat trays or alternate containers, the specific weight and height limits in 19.8.

* * * * *

[Revise title and text of the introductory sentence of 19.8 as follows:]

19.8 Preparing Bundles in Flat Trays or Alternate Containers

In addition to the standards in 19.4, mailers must prepare and secure

bundles placed in flat trays or alternate containers as follows:

* * * * *

19.10 Pieces With Simplified Addresses

[Revise the third sentence of 19.10 as follows:]

* * * Bundles must be secure and stable subject to specific weight limits in 705.8.0 if placed on pallets, specific weight and height limits in 19.8 for Periodicals placed in flat trays or approved alternate containers, and specific thickness limits in 19.5 for cards and letter-size pieces.

* * * * *

19.12 Address Visibility

* * * This standard does not apply to the following:

[Revise items 19.12a and b as follows:]

a. Bundles placed in or on 5-digit or 5-digit scheme (L001) flat trays, alternate containers or pallets.

b. Bundles placed in carrier route and 5-digit carrier routes flat trays or alternate containers.

* * * * *

[Revise title of 20.0 as follows:]

20.0 Trays and Alternate Containers

20.1 Basic Standards

20.1.1 General

[Revise the first sentence of the introductory paragraph of 20.1.1 as follows:]

Mailings must be prepared in letter trays, flat trays, or bundled and placed directly on pallets or in flat trays or approved alternate containers as shown in Exhibit 20.1.1 and under other applicable standards in this section.

* * *

* * * * *

[Revise the USPS Container method column for the Flat-size, parcels row only to replace the word "sack" in Exhibit 20.1.1 as follows:]

EXHIBIT 20.1.1 USPS CONTAINERS

Processing category	USPS container
Periodicals:	
* * *	* * *
Flat-size, parcels	Flat tray or alternate container.

* * * * *

[Delete current sections 20.1.5, Origin/Entry 3-Digit/Scheme; 20.1.6, flats and Irregular Parcels—Origin/Entry SCF Sacks; and 20.1.7, Flats and Irregular Parcels—Origin Mixed ADC Sacks, in their entirety.]

* * * * *

[Renumber 20.3 through 20.4.2 as the new 20.4 through 20.5.2 and add a new 20.3 as follows:]

20.3 Flat Tray Usage

When using flat trays in lieu of palletizing or optionally traying under 22.7 and 25.5, mailers must prepare mailpieces in flat trays with green lids.

Flat tray sizes are as follows:

a. Inside bottom dimensions: 14–3/4 inches long by 10–3/4 inches wide.

b. Height: 8 inches to bottom of handhold, 11–1/4 inches to top of tray.

[Revise title and text of renumbered 20.4 as follows:]

20.4 Flat Tray or Container Preparation

If mailers are unable to palletize, flat-size and parcel mailings must be placed in flat trays or approved alternate containers except when permitted under other applicable standards in this section. All tray or container preparation is subject to these standards:

a. Each tray or container must bear the correct tray label.

b. The weight of a tray or container and its content must not exceed 70 pounds

[Revise title of renumbered 20.5 as follows:]

20.5 Standards for Optional Use of Flat Trays

20.5.1 General

[Revise renumbered 20.5.1 as follows:]

Mailers may optionally prepare machinable flat-size pieces in flat trays, under 22.7 and 25.5, instead of preparing these pieces in bundles.

* * * * *

[Revise title of 21.0 as follows:]

21.0 Tray Labels

21.1 Basic Standards

21.1.1 General

[Revise 21.1.1 as follows:]

Tray labels are subject to the following:

a. Use 2-inch labels for trays or approved alternate containers.

b. Illegible labels are not acceptable. Machine-printed labels (available from the USPS) ensure legibility. Legible hand-printed labels are acceptable.

c. Tray labels for automation price mailings are subject to 21.4 and 708.6.0.

d. Intelligent Mail tray labels, used on trays or alternate containers, are subject to the standards in 708.6.5, and to the specifications posted at *http://ribbs.usps.gov.*

* * * * *

21.1.2 Line 1 (Destination Line)

Line 1 (destination line) must meet these standards:

* * * * *

[Revise 21.1.2 c as follows:]

c. *Overseas Military Mail.* On 5-digit trays or approved alternate containers for overseas military destinations, Line 1 shows, from left to right, "APO" or "FPO," followed by "AE" (for ZIP Codes within the ZIP Code prefix range 090–098), "AA" (for ZIP Codes within the 3-digit ZIP Code prefix 340), or "AP" (for ZIP Codes within the ZIP Code prefix range 962–966), followed by the destination 5-digit ZIP Code of the mail in the tray or container.

* * * * *

21.1.3 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

[Revise the second sentence of 21.1.3a as follows:]

a. * * * This line must show the class and processing category of the mail in the tray or alternate container and other information as specified by standards. * * *

* * * * *

[Delete 21.2, Sack Labels, in its entirety, and renumber current 21.3 and 21.4 as the new 21.2 and 21.3.]

* * * * *

21.2 Tray Labels

21.2.1 Placement

[Revise the second sentence of renumbered 21.2.1 as follows:]

* * * If no specific location is indicated, place the label securely in an adhesive-backed label holder affixed horizontally to the top left corner of one end of the tray, for letter trays; and the lower left corner, for flat trays. * * *

* * * * *

[Revise title and the text of the introductory sentence of renumbered 21.3 as follows:]

21.3 Use of Barcoded Tray Labels

Exhibit 21.3 shows the types of mail requiring barcoded tray labels. Barcoded labels must meet these general standards:

* * * * *

[Revise items 21.3d and e as follows:]

d. Mailers must insert barcoded labels completely into the label holder on the tray or alternate container to prevent their loss during transport and processing.

e. Intelligent Mail tray labels must be used on all trays and alternate containers for mailings entered under the full-service Intelligent Mail automation option.

[Revise the Price or Type column only for the second line under Periodicals to replace the word "cosacked" with "cotrayed" in exhibit 21.3 as follows:]

EXHIBIT 21.3 REQUIRED BARCODED TRAY LABELS

Price or type	Processing category
Periodicals: * * *	 * * *
Cobundled and cotrayed under 705.9.0 through 705.13.0	* * *

* * * * *

22.0 Preparing Nonbarcoded (Presorted) Periodicals

22.1 Basic Standards

22.1.1 General

[Revise the introductory sentence of 22.1.1 as follows:]

For letter-size mail, nonletter-size mail prepared in flat trays or approved alternate containers, and palletized mail, the following standards apply:

* * * * *

[Revise items 22.1.1c through e as follows:]

c. Nonletter-size pieces must be bundled under 22.2 and placed on pallets. Bundles placed on pallets must meet additional bundling criteria under 705.8.0.

d. When unable to palletize, bundles of nonletter-size pieces must be prepared in flat trays or approved alternate containers (except under 23.4.2) under one of the following:

1. Trayed under 22.6, except that a nonbarcoded price mailing that is part of a mailing job that also contains a barcoded mailing must be trayed as described in 22.1.2.

2. Palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0.

e. Flat trays or approved alternate containers prepared under 22.6, may subsequently be prepared on pallets under 705.8.0.

* * * * *

[Revise title of 22.1.2 as follows:]

22.1.2 Additional Standards for Nonletter-Size Unpalletized Mailing Jobs Containing More Than One Mailing

The following standards apply:

[Revise the first sentence of 22.1.2a as follows:]

a. Mailings prepared in flat trays or approved alternate containers that are part of a mailing job that includes a carrier route, barcoded price, and nonbarcoded price mailing must be prepared under one of the options listed below. * * *

* * * * *

[Revise items 22.1.2b through d as follows:]

b. Mailings prepared in flat trays or approved alternate containers that are part of a mailing job that includes a barcoded price and nonbarcoded price mailing must be prepared under the cotraying standards in 705.9.0.

c. Trayed or containerized mailing jobs that contain only a carrier route mailing and a nonbarcoded price mailing may be prepared separately, or may be prepared using the merged traying option under 705.10.0.

d. Trayed or containerized mailing jobs that contain only a carrier route mailing and a barcoded price mailing may be prepared separately under 23.0 and 25.0, or may be prepared using the merged traying option under 705.10.0.

* * * * *

22.1.4 Merged Containerization of Nonletter-Size Carrier Route, Barcoded Price, and Nonbarcoded Price Mail

[Revise the first sentence of 22.1.4 as follows:]

Under the optional preparation in 705.10.0, nonbarcoded price 5-digit bundles prepared under 22.1 and 22.2 are cotrayed with carrier route bundles prepared under 23.0 and with barcoded price 5-digit bundles prepared under 25.0 in merged 5-digit trays, sacks or alternate containers and in merged 5-digit scheme trays, sacks or alternate containers. * * *

* * * * *

22.4 Bundles With Fewer Than Six Pieces

[Revise the last sentence of the introductory paragraph of 22.4 as follows:]

* * * Low-volume bundles are permitted only when they are prepared in flat trays, approved alternate containers, or prepared on pallets as follows:

[Revise 22.4a as follows:]

a. Place bundles in only 5-digit, 3-digit, and SCF trays or alternate containers hat contain at least 24 pieces, or in origin/entry SCF trays or containers, as appropriate.

* * * * *

22.5 Tray Preparation—Letter-Size Pieces

[Revise the introductory paragraph only of 22.5 as follows:]

Mailers must segregate trays destined within the origin/entry SCF as described in 28.3. Preparation sequence and labeling:

* * * * *

[Revise the title and introductory paragraph only of 22.6 as follows:]

22.6 Tray Preparation—Flat-Size Pieces and Parcels

Mailers must segregate trays destined within the origin/entry SCF as described in 28.3. For mailing jobs that also contain a barcoded price mailing, see 22.1.2 and 705.9.0 or 705.10.0. For other mailing jobs, preparation sequence and labeling:

* * * * *

22.7 Optional Tray Preparation—Flat-Size Nonbarcoded Pieces

[Revise the first sentence of the introductory paragraph of 22.7and add a new second sentence as follows:]

As an option, mailers may place unbundled machinable flat-size pieces meeting the criteria in 301.3.0 in flats trays (see 20.4). Mailers must segregate trays destined within the origin/entry SCF as described in 28.3. * * *

* * * * *

[Add a new 22.8 as follows:]

22.8 Containerization—Flat Tray Preparation and Labeling

For mail prepared in bundles, mailers must prepare pallets under 705.8.0 when minimum volume is available for a required pallet level. Mailers who are unable to palletize, or mailers of small volume mailings, must prepare bundles in flat trays or approved alternate containers as shown in items a through c below. Preparation sequence and labeling:

a. *Origin-Entry 3 Digit* (optional); no minimum; when these separations are made, mailers must segregate trays as described in 28.3; labeling:

1. Line 1: Column B, L002

2. Line 2: "PER" or "NEWS" FLTS 3D NON BC

b. *Local Surface Transport* (required); no minimum; labeling:

1. Line 1: "OMX" followed by L201, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PER" or "NEWS" FLTS NON BC."

c. *Extended Surface Network* (required); no minimum; labeling:

1. Line 1: "MXD" followed by L009, Column B for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PER" or "NEWS" FLTS NON BC."

23.0 Preparing Carrier Route Periodicals

23.1 Basic Standards

23.1.1 General

Mailers must meet the following standards for carrier route mailings:

[Revise items 23.1.1c through e as follows:]

c. Generally nonletter-size pieces must be bundled under 23.2 and placed on pallets under 705.8.0.

d. Except as noted in 23.4.2, mailers must palletize bundles of nonletter-size pieces, or place bundles in flat trays or approved alternate containers, according to one of the following:

1. Tray or containerize under 23.4, or under 705.10.1 if eligible to be cotrayed with barcoded price and nonbarcoded price Periodicals pieces.

2. Palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0.

e. Flat trays or approved alternate containers prepared under 23.4, may subsequently be prepared on pallets under 705.8.0.

* * * * *

23.1.4 Merged Containerization of Nonletter-Size Carrier Route and Machinable Barcoded and Nonbarcoded Price Mail

[Revise the second sentence of 23.1.4 as follows:]

* * * Under the optional preparation in 705.10.0, carrier route bundles prepared under 23.1 and 23.2.3 are cotrayed with machinable nonbarcoded price 5-digit bundles prepared under 22.0 and with machinable barcoded price 5-digit bundles prepared under 25.0 in merged 5-digit trays or containers and merged 5-digit scheme trays or containers. * * *

* * * * *

23.3 Preparation—Letter-Size Pieces

23.3.1 Basic Preparation

[Revise the introductory paragraph of 23.3.1 as follows:]

Mailers must segregate trays destined within the origin/entry SCF as described in 28.3. Preparation sequence and labeling:

* * * * *

23.4 Preparation—Flat-Size Pieces and Irregular Parcels

[Revise the title and introductory paragraph of 23.4.1 as follows:]

23.4.1 Tray Preparation

Mailers must segregate trays destined within the origin/entry SCF as described in 28.3. Preparation sequence and labeling:

* * * * *

[Revise the opening paragraph only of 23.4.1d as follows:]

d. *3-digit carrier routes,* required with one six-piece bundle.

* * * * *

[Revise title and text of the introductory paragraph on 23.4.2 as follows:]

23.4.2 Exception to Containerization

Containerization is not required for carrier route or 5-digit bundles prepared for and entered at a DDU when the mailer unloads bundles under 29.5.5. Mail presented under this exception is not subject to the container charge (but is still subject to the bundle charge). Mailers must prepare uncontainerized bundles as follows:

* * * * *

23.6 Bundles With Fewer Than Six Pieces

[Revise the last sentence of the introductory paragraph of 23.6 as follows:]

* * * Low-volume carrier route bundles are permitted only when they are prepared on pallets, placed in flat trays or approved alternate containers as follows:

[Revise 23.6a as follows:]

a. Place bundles in only 5-digit scheme carrier routes and 5-digit carrier routes trays or containers that contain at least 24 pieces, or 3-digit carrier routes or merged 3-digit trays or containers that contain at least one six-piece carrier route bundle.

* * * * *

23.7 Multi-Box Section Bundles—Optional Preparation

A mailer may combine individual copies of Periodicals for Post Office box sections into a multi-box section bundle or bundles of copies to the same 5-digit ZIP Code under these conditions:

* * * * *

[Revise 23.7f as follows:]

f. Bundles must be placed in existing carrier-route, 5-Digit scheme, or 5-Digit carrier routes trays or containers.

* * * * *

24.0 Preparing Letter-Size Barcoded (Automation) Periodicals

* * * * *

24.2 Additional Standards

24.2.1 Preparing Barcoded Price Letters

[Revise the introductory paragraph of 24.2.1 as follows:]

Mailers must segregate trays destined within the origin/entry SCF as described in 28.3. Preparation, sequence, and Line 1 labeling:

* * * * *

25.0 Preparing Flat-Size Barcoded (Automation) Periodicals

25.1 Basic Standards

25.1.1 General

[Revise the introductory paragraph of 25.11 as follows:]

Each piece must meet the physical standards in 301.3.0 or in 26.0. Bundle, tray or container preparation is subject to 18.0 through 21.0 and this section. Trays or containers must bear the appropriate barcoded container labels under 708.6.0. Pieces may be prepared in bundles that are not placed on

pallets, or in trays or other containers, only as provided in 23.4.2.

* * * * *

[Revise title and text of 25.1.6.7]

25.1.6 Flat Tray and Container Preparation

Mailers may combine bundles of pieces prepared under 301.3.0 and bundles of pieces prepared under 26.0 in the same flat tray or approved alternate container, with the exception of 5-digit scheme sacks, which may contain only pieces prepared under 301.3.0.

* * * * *

25.1.8 Bundles With Fewer Than Six Pieces

[Revise the last sentence of the introductory paragraph of 25.1.8 as follows:]

* * * These low-volume bundles are permitted only when they are trayed or prepared on pallets under these conditions:

[Revise 25.1.8a as follows:]

a. Place 5-digit and 3-digit bundles in only 5-digit scheme, 5-digit, 3-digit, and SCF flat trays or alternate containers, as appropriate, that contain at least 24 pieces, or in merged 3-digit flat trays or alternate containers that contain at least one six-piece carrier route bundle, or in origin/entry SCF flat trays or alternate containers.

* * * * *

[Revise 25.1.8c as follows:]

c. Place 5-digit scheme and 3-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF trays or approved alternate containers, as appropriate, that contain at least 24 pieces, or in merged 3-digit trays or alternate containers that contain at least one six-piece carrier route bundle, or in origin/entry SCF trays or alternate containers.

* * * * *

[Revise title of 25.1.9 as follows:]

25.1.9 Cotraying and Cobundling With Nonbarcoded and Carrier Route Mail

The following standards apply (except as provided in 25.1.7):

* * * * *

[Revise items 25.1.9b and c as follows:]

b. If the mailing job contains a machinable barcoded and nonbarcoded price mailing, then it must be prepared under the cotraying standards in 705.9.0. Machinable barcoded and nonbarcoded price pieces may be cobundled under the standards in 705.11.0.

c. If the mailing job contains a carrier route mailing and a machinable barcoded price mailing, then it must be separately trayed under 23.0 and 25.0 or prepared using the merged tray option under 705.10.0.

25.1.10 Merged Containerization With Nonbarcoded and Carrier Route Flats

[Revise 25.1.10 as follows:]

When the standards in 705.10.0, 705.12.0, or 705.13.0 are met, 5-digit bundles of machinable barcoded, machinable nonbarcoded, and carrier route mail that are part of the same mailing job may be combined on merged 5-digit scheme flat trays, approved alternate containers or pallets and merged 5-digit flat trays, approved alternate containers or pallets. Bundles that are cotrayed or copalletized must be part of the same mailing job and mail class. Machinable barcoded pieces may be cobundled with machinable nonbarcoded pieces under 705.11.0.

* * * * *

[Revise the title and introductory paragraph only of 25.4 as follows:]

25.4 Traying and Labeling

Mailers must segregate trays destined within the origin/entry SCF as described in 28.3. For mailing jobs that also contain a machinable nonbarcoded price mailing, see 25.1.9 and 705.9.0. Other mailing jobs are prepared, trayed and labeled as follows:

* * * * *

25.5 Optional Tray Preparation—Flat-Size Barcoded Pieces

[Add a new first sentence and revise the new second sentence of the introductory paragraph of 25.5 as follows:]

Mailers must segregate trays destined within the origin/entry SCF as described in 28.3. As an option, mailers may place unbundled machinable flat-size pieces meeting the criteria in 301.3.0 in flats trays. * * *

* * * * *

[Add a new 25.6 as follows:]

25.6 Containerization—Flat Tray Preparation and Labeling

For mail prepared in bundles, mailers must prepare pallets under 705.8.0 when minimum volume is available for a required pallet level. Mailers who are unable to palletize, or mailers of small volume mailings, must prepare bundles in flat trays or approved alternate containers as shown in items a through c below. Preparation sequence and labeling:

a. *Origin-Entry 3 Digit* (optional); no minimum; when these separations are made, mailers must segregate trays as described in 28.3; labeling:

1. Line 1: Column B, L002

2. Line 2: "PER" or "NEWS" FLTS 3D BC

b. *Local Surface Transport* (required); no minimum; labeling:

1. Line 1: "OMX" followed by L201, Column C information for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PER" or "NEWS" FLTS BC.

c. *Extended Surface Network* (required); no minimum; labeling:

1. Line 1: "MXD" followed by L009, Column B for the facility serving the 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: "PER" or "NEWS" FLTS BC.

* * * * *

27.0 Combining Multiple Editions or Publications

* * * * *

27.3 Minimum Volume

The following minimum volume standards apply:

[Revise 27.3a as follows:]

a. For comailings prepared under 27.1a, multiple publications or editions are combined to meet the required minimum volume per bundle, tray or container for the price claimed.

* * * * *

28.0 Enter and Deposit

* * * * *

[Revise 28.0 by renumbering current items 28.3 and 28.4 as the new 28.4 and 28.5 and add a new 28.3 as follows:]

28.3 Segregation of Origin SCF Mailpieces

Mailers may optionally separate origin/entry carrier route, 5-digit (scheme) carrier route, (merged) 5-digit (scheme) and 3-digit (scheme) trays, containers or bundles destinating in the service area of the SCF serving the Post Office where the mail is verified, or the service area of the SCF/plant where mail is entered. When making such separations, mailpieces must be prepared in accordance with 22.0 through 25.0 and segregated from the remainder of the mailing. Mailers must segregate the origin/entry trays by one of these methods: Separately containerize the trays; place the trays in a conspicuous location on top of origin SCF pallet or other container; or present them separately to acceptance personnel.

* * * * *

29.0 Destination Entry

29.1 Basic Standards

29.1.1 Price Application

Periodicals may qualify for destination entry prices under 29.3

through 29.5. The following standards apply:

[Revise 29.11a as follows:]

a. An individual bundle, tray, or pallet may contain pieces claimed at different destination entry pound prices.

* * * * *

29.1.2 Documentation

[Revise the first sentence of 29.12 as follows:]

Subject to 708.1.0, the mailer must be able to show compliance with eligibility requirements (by bundle, tray, or pallet), and list the number of addressed pieces by presort level for each 5-digit and 3-digit ZIP Code destination as appropriate for the prices and discounts claimed.

* * * * *

29.4 Destination Sectional Center Facility

* * * * *

29.4.2 Price Eligibility

Determine price eligibility as follows:

a. Pound Prices. * * * Nonletter-size pieces are also eligible when the mailer deposits 5-digit bundles at the destination delivery unit (DDU) (the facility where the carrier cases mail for delivery to the addresses on the pieces) and the 5-digit bundles are in or on the following types of containers:

[Revise 29.4.2a1 as follows:]

1. A merged 5-digit scheme or merged 5-digit tray or container.

* * * * *

708 Technical Specifications

1.0 Standardized Documentation for First-Class Mail, Periodicals, Standard Mail, and Flat-Size Bound Printed Matter

* * * * *

1.2 Format and Content

For First-Class Mail, Periodicals, Standard Mail, and Bound Printed Matter, standardized documentation includes:

* * * * *

c. For mail in trays or approved alternate containers, list these required elements:

[Revise 1.2c1 and c2 as follows:]

1. Tray/alternate container sortation level. Note with an asterisk ("*") all trays containing overflow mail moved into that tray under 235.6.6, 245.5.3 or 245.7.5.

2. Tray/alternate container destination ZIP Code from top line of tray/container label except that, for 3-digit carrier routes trays, list the individual 5-digit ZIP Codes in each tray.

* * * * *

[Revise the first sentence of 1.2c4 as follows:]

4. Separate columns with the number of pieces for each price reported in the mailing, and a continuous running total of pieces for each mailing (group information either in ZIP Code order and by sortation level or by sortation level and within each sortation level, by ZIP Code; report trays and alternate containers on pallets by pallet level and destination; include all information required in 1.2c for mail in trays or alternate containers). * * *

[Revise 1.2c5 as follows:]

5. The tray identification number and size (1-foot or 2-foot) if available for letter mail in trays. The tray identification number is optional for unbundled automation flats placed in flat trays.

* * * * *

[Revise 1.2c7 as follows:]

7. For Periodicals mailings that contain both In-County and Outside-County pieces, the listing may include a separate "Container Charge" and "Bundle Charge" column. Indicate which trays, alternate containers, and bundles are subject to the container or bundle charges and a total or a running total.

* * * * *

e. * * * For Periodicals mailings, documentation also must provide:

* * * * *

[Revise the last sentences of items 1.2e2 and e3 as follows:]

2. * * * Report only trays, approved alternate containers, and pallets subject to the Outside-County container prices under 707.1.1.4.

3. * * * Report only bundles, trays, approved alternate containers, and pallets subject to the Outside-County bundle and container prices.

* * * * *

1.5 Combined, Copalletized, and Merged Mailings

For combined or copalletized mailings of Periodicals and Standard Mail prepared under 705.8.0, 705.10.0, 705.12.0, or 705.13.0, documentation must show this additional information:

a. For mailings that require multiple postage statements:

* * * * *

[Revise 1.5a2 as follows:]

2. Prices for each product or edition shown in the correct "Price" column and summarized for each tray, approved alternate container, or pallet and for the entire mailing.

* * * * *

1.8 Optional Information

[Revise 1.8 as follows:]

Standardized documentation may include additional information about the pieces mailed (such as individual tray, approved alternate container, or sack total piece counts, optional identification codes, bundle weights) if this information does not conflict with the information required under 1.2 through 1.7.

* * * * *

[Revise title of 6.0 as follows:]

6.0 Standards for Barcoded Tray Labels and Container Placards

6.1 General

[Revise title and text of 6.1.1 as follows:]

6.1.1 Tray Labels

Intelligent Mail tray labels (*see* 6.5) and barcoded tray labels are the USPS-approved methods to encode routing, content, origin, and mailer information on trays, approved alternate containers and sacks. Intelligent Mail tray labels are designed for use with Intelligent Mail barcoded mail and have the capacity to provide unique identification throughout postal processing.

* * * * *

[Revise title of 6.2 as follows:]

6.2 Specifications for Barcoded Tray Labels

6.2.1 Use

[Revise 6.2.1 as follows:]

Exhibit 6.2.1 shows the types of mail requiring barcoded tray labels. Barcoded labels must meet these general standards:

a. Mailer-produced barcoded labels must meet the standards in 6.0.

b. All information on barcoded labels must be machine-printed. Alterations to preprinted barcoded labels (*e.g.,* handwritten changes) may not be made.

c. Labels must be inserted completely into the label holder on the tray or alternate container to prevent their loss during transport and processing.

[Revise Exhibit 6.2.1 by inserting two new rows above First-Class Mail to add reference to Express and Priority Mail O&D, and revise the "Price or Type" descriptions within Periodicals and Standard Mail as follows:]

EXHIBIT 6.2.1—REQUIRED BARCODED TRAY AND SACK LABELS

Price or type	Processing category
Express Mail Open & Distribute.	Any.
* * * * *	
Periodicals	

EXHIBIT 6.2.1—REQUIRED BARCODED TRAY AND SACK LABELS—Continued

Price or type	Processing category
* * * * *	
Cobundled and cotrayed under 705.90 through 705.13.0.	Flat-size.
* * * * *	
Standard Mail	
* * * * *	
Cobundled and cotrayed under 705.9.0 through 705.13.0.	Flat-size.

6.2.2 Line 1 (Destination Line)

The destination line must meet these standards:

[Revise the first two sentences of 6.2.2a as follows:]

a. *Placement.* The destination line must be the top line of the label, placed in the position shown in Exhibit 6.2.2a (above the barcode). An exception is that one line of extraneous information may appear above the destination line on tray labels as provided in 6.3.2, and 6.3.2f. * * *

[Renumber and re-title current Exhibit 6.2.2a as follows:]

Exhibit 6.2.2 Barcoded Tray Labels

* * * * *

[Revise 6.2.2b as follows:]

b. *Information.* The destination line must contain only the information required by the applicable standards for the class, processing category, sortation level of the tray, approved alternate container or sack, and the prices claimed. This information is contained in the labeling lists for all sortation and price levels except trays, alternate containers or sacks to carrier route, 5-digit carrier routes, merged 5-digit, and 5-digit destinations, and except for automation letter trays to 5-digit scheme destinations. For the destination line of carrier route, 5-digit carrier routes, merged 5-digit, and 5-digit trays, alternate containers or sacks, the city, two-letter state abbreviation, and 5-digit ZIP Code of the destination 5-digit ZIP Code area must be shown. For 5-digit scheme trays, the city, two-letter state abbreviation, and ZIP Code for the destination scheme must be obtained from the City State Product. The destination line may contain abbreviated city and state information if such abbreviations are those in the City State Product.

[Delete current Exhibit 6.2.2b, Barcoded 1–Inch Sack Labels, in its entirety.]

[Revise the second and fifth sentences of 6.2.2c as follows:]

c. *Overseas Military Mail.* The exact content identifier number (CIN) that matches the level of tray or alternate container must be used in the barcode and barcode numeric line on barcoded tray labels. * * * A footnote at the end of the content line information means that the mailer must add appropriate information when ordering and printing tray labels. * * *

6.2.3 Line 2 (Content Line)

The content line must meet these standards:

[Revise the third sentence of 6.2.3a as follows:]

a. * * * This line must show the class, processing category, and the sortation level of the tray or alternate container as required by the applicable standards for the mailing. * * *

* * * * *

6.2.4 3-Digit Content Identifier Numbers

[Revise the introductory paragraph of 6.2.4 as follows:]

The exact content identifier number (CIN) that matches the level of tray, approved alternate container or sack must be used in the barcode and barcode numeric line on barcoded tray labels. The required second line of information that corresponds to the CIN must appear on the human-readable content line of the label. The human-readable content line is automatically printed when labels are obtained through the PASSPORT system or ordered on Form 1578–B for printing at the Label Printing Center in Topeka, Kansas. A footnote at the end of the content line information means that the mailer must add appropriate information when ordering and printing tray labels. Any mailer using PASSPORT to order labels must also add the appropriate additional information to the human-readable content line for those content lines marked with a footnote. See Exhibit 6.2.4.

Exhibit 6.2.4 3-Digit Content Identifier Numbers

[Revise text of "Class and Mailing" and "Human Readable Content Line" for Express and Priority Mail of Exhibit 6.2.4 as follows:

Class and mailing	CIN	Human-readable content line
Express Mail		
Open & Distribute, all container & sack levels	143	EXPRESS O&D.
Priority Mail		
Open & Distribute, all container & sack levels	165	PRIORITY O&D.

[Revise the "Class and Mailing" column only for Exhibit 6.2.4 for the following mail classes (CIN codes are shown for comparison):]

Class and mailing	CIN	Human-readable content line
First-Class Mail		
* * * * * * *		
FCM Parcels—Presorted:		
5-digit scheme containers, trays & sacks	289	* * *
5-digit containers trays & sacks	289	* * *
3-digit containers or trays	290	* * *

Class and mailing	CIN	Human-readable content line
ADC containers or trays	291	* * *
mixed ADC containers or trays	292	* * *
Periodicals (PER)		
* * * * * * *		
PER Flats—Carrier Route:		
car. rt. containers or trays—saturation	387	* * *
car. rt. containers or trays—high density	388	* * *
car. rt. containers or trays—basic	385	* * *
5-digit carrier routes containers or trays	386	* * *
5-digit scheme car. rts. containers or trays	371	* * *
3-digit carrier routes containers	351	* * *
PER Flats—Barcoded:		
5-digit containers or trays	372	* * *
5-digit scheme containers or trays	372	* * *
3-digit containers or trays	373	* * *
SCF containers or trays	377	* * *
ADC containers or trays	374	* * *
mixed ADC containers or trays	375	* * *
origin mixed ADC containers or trays	381	* * *
PER Flats—Nonbarcoded:		
5-digit scheme containers or trays	378	* * *
5-digit containers or trays	378	* * *
3-digit containers or trays	379	* * *
SCF containers or trays	384	* * *
ADC containers or trays	380	* * *
mixed ADC containers or trays	382	* * *
origin mixed ADC containers or trays	381	* * *
[Revise the section title as follows:]		
PER Flats—Cotrayed Barcoded and Nonbarcoded:		
5-digit scheme containers or trays	321	* * *
5-digit containers or trays	321	* * *
3-digit containers or trays	322	* * *
SCF containers or trays	329	* * *
ADC containers or trays	331	* * *
Mixed ADC containers or trays	332	* * *
origin mixed ADC containers or trays	381	* * *
PER Flats—Merged Carrier Route, Barcoded, and Nonbarcoded:		
merged 5-digit containers or trays	339	* * *
merged 5-digit scheme containers or trays	349	* * *
merged 3-digit containers or trays	352	* * *
PER Irregular Parcels—Merged Carrier Route and Presorted:		
merged 5-digit containers, trays & sacks	340	* * *
merged 3-digit containers or trays	354	* * *
merged 5-digit scheme containers or trays	365	* * *
PER Irregular Parcels—Carrier Route:		
saturation containers, trays & sacks	397	* * *
high density containers, trays & sacks	398	* * *
basic containers, trays & sacks	395	* * *
5-digit carrier routes containers, trays & sacks	396	* * *
5-digit scheme car. rts. containers or trays	399	* * *
3-digit carriers routes containers or trays	355	* * *
PER Irregular Parcels—Presorted:		
5-digit containers, trays & sacks	389	* * *
3-digit containers or trays	390	* * *
SCF containers or trays	394	* * *
ADC containers or trays	391	* * *
mixed ADC containers or trays	392	* * *
origin mixed ADC containers or trays	363	* * *
* * * * * * *		
Periodicals (NEWS)		
* * * * * * *		
NEWS Flats—Carrier Route:		
car. rt. containers or trays—saturation	487	* * *

Class and mailing	CIN	Human-readable content line
car. rt. containers or trays—high density	488	* * *
car. rt. containers or trays—basic	485	* * *
5-digit carrier routes containers or trays	486	* * *
5-digit scheme car. rts. containers or trays	471	* * *
3-digit carrier routes containers or trays	451	* * *
NEWS Flats—Barcoded:		
5-digit containers or trays	472	* * *
5-digit scheme containers or trays	472	* * *
3-digit containers or trays	473	* * *
SCF containers or trays	477	* * *
ADC containers or trays	474	* * *
mixed ADC containers or trays	475	* * *
origin mixed ADC containers or trays	481	* * *
NEWS Flats—Nonbarcoded:		
5-digit scheme containers or trays	478	* * *
5-digit containers or trays	478	* * *
3-digit containers or trays	479	* * *
SCF containers or trays	484	* * *
ADC containers or trays	480	* * *
mixed ADC containers or trays	482	* * *
origin mixed ADC containers or trays	481	* * *
[Revise the section title as follows:]		
NEWS Flats—Cotrayed Barcoded and Nonbarcoded:		
5-digit scheme containers or trays	421	* * *
5-digit containers or trays	421	* * *
3-digit containers or trays	422	* * *
SCF and origin/entry containers or trays	429	* * *
ADC containers or trays	431	* * *
mixed ADC containers or trays	432	* * *
origin mixed ADC containers or trays	481	* * *
NEWS Flats—Merged Carrier Route, Barcoded, and Nonbarcoded:		
merged 5-digit	439	* * *
merged 5-digit scheme	449	* * *
merged 3-digit sacks	452	* * *
NEWS Irregular Parcels—Merged Carrier Route and Presorted:		
merged 5-digit	440	* * *
merged 5-digit scheme	465	* * *
merged 3-digit containers or trays	454	* * *
NEWS Irregular Parcels—Carrier Route:		
saturation containers or trays	497	* * *
high density containers or trays	498	* * *
basic containers or trays	495	* * *
5-digit carrier routes containers or trays	496	* * *
5-digit scheme carrier routes containers or trays	499	* * *
3-digit carrier routes containers or trays	455	* * *
NEWS Irregular Parcels—Presorted:		
5-digit containers, trays & sacks	489	* * *
3-digit containers or trays	490	* * *
SCF containers or trays	494	* * *
ADC containers or trays	491	* * *
mixed ADC containers or trays	492	* * *
origin mixed ADC containers or trays	463	* * *
Standard Mail		
* * * * * * *		
Enhanced Carrier Route Flats—Nonautomation:		
saturation containers or trays	587	* * *
high density containers or trays	588	* * *
basic containers or trays	589	* * *
5-digit carrier routes containers or trays	586	* * *
5-digit scheme carrier routes containers or trays	529	* * *
[Revise the section title as follows:]		
STD Flats—Cotrayed Automation and Nonautomation:		
5-digit scheme containers or trays	521	* * *
5-digit containers or trays	521	* * *
3-digit and origin/entry 3-digit containers or trays	522	* * *
ADC containers or trays	531	* * *

Class and mailing	CIN	Human-readable content line
mixed ADC containers or trays	532	* * *
* * * * * * *		*
STD Flats—Automation:		
5-digit containers or trays	572	* * *
5-digit scheme containers or trays	572	* * *
3-digit containers or trays	573	* * *
ADC containers or trays	574	* * *
mixed ADC containers or trays	575	* * *
STD Flats—Nonautomation:		
5-digit scheme containers or trays	578	* * *
5-digit containers or trays	578	* * *
3-digit containers or trays	579	* * *
ADC containers or trays	580	* * *
mixed ADC containers or trays	582	* * *
Customized MarketMail (CMM):		
CMM letter trays	206	* * *
CMM flat trays	207	* * *
CMM alternate containers	205	* * *
[Delete sections describing STD Not Flat-Machinable Pieces, under 6 ounces and over 6 ounces in their entirety. Resume with ECR Irregular Parcels—Nonautomation as follows:]		
ECR Irregular Parcels—Nonautomation:		
saturation containers, trays & sacks	599	* * *
high density containers, trays & sacks	600	* * *
basic containers, trays & sacks	601	* * *
5-digit carrier routes containers, trays & sacks	598	* * *
STD Irregular Parcels—Presorted:		
5-digit scheme containers, trays & sacks	590	* * *
5-digit containers, trays & sacks	596	* * *
SCF containers or trays	571	* * *
ASF containers or trays	570	* * *
mixed NDC containers or trays	594	* * *
STD Machinable Parcels—Presorted:		
5-digit containers, trays & sacks	670	* * *
5-digit scheme containers, trays & sacks	670	* * *
ASF containers or trays	672	* * *
NDC containers or trays	673	* * *
Mixed NDC containers or trays	674	* * *
STD Machinable and Irregular Parcels—Presorted:		
5-digit containers, trays & sacks	603	* * *
5-digit scheme containers, trays & sacks	603	* * *
Package Services		
Carrier Route BPM—Flats:		
carrier route containers or trays	657	* * *
5-digit scheme carrier routes containers or trays	659	* * *
5-digit carrier routes containers or trays	658	* * *
Presorted BPM—Flats:		
5-digit scheme containers or trays	649	* * *
5-digit containers or trays	649	* * *
3-digit containers or trays	650	* * *
SCF containers or trays	654	* * *
ADC containers or trays	651	* * *
mixed ADC containers or trays	653	* * *
Presorted BPM—Automation Flats:		
5-digit containers or trays	635	* * *
5-digit scheme containers or trays	635	* * *
3-digit containers or trays	636	* * *
SCF containers or trays	637	* * *
ADC containers or trays	638	* * *
mixed ADC containers or trays	639	* * *
[Revise section title as follows:]:		
BPM Flats—Cotrayed Barcoded and Presorted:		
5-digit scheme containers or trays	648	* * *
5-digit containers or trays	648	* * *
3-digit containers or trays	661	* * *
SCF containers or trays	667	* * *

Class and mailing	CIN	Human-readable content line
ADC containers or trays	668	* * *
mixed ADC containers or trays	669	* * *
Carrier Route BPM—Irregular Parcels:		
carrier route containers, trays & sacks	697	* * *
5-digit carrier routes containers, trays & sacks	698	* * *
5-digit scheme carrier routes containers, trays & sacks	698	* * *
Presorted BPM—Irregular Parcels:		
5-digit containers, trays & sacks	690	* * *
5-digit scheme containers, trays & sacks	690	* * *
3-digit containers or trays	691	* * *
SCF containers or trays	696	* * *
ADC containers or trays	692	* * *
Mixed ADC containers or trays	694	* * *
Carrier Route BPM—Machinable Parcels:		
carrier route containers, trays & sacks	687	* * *
Presorted BPM—Machinable Parcels:		
5-digit containers, trays & sacks	680	* * *
5-digit scheme containers, trays & sacks	680	* * *
ASF containers or trays	682	* * *
NDC containers or trays	683	* * *
mixed NDC containers or trays	684	* * *
Media Mail and Library Mail Flats—Presorted:		
5-digit containers or trays	649	* * *
3-digit containers or trays	650	* * *
ADC containers or trays	651	* * *
mixed ADC containers or trays	653	* * *
Media Mail and Library Mail Irregular Parcels—Presorted:		
5-digit scheme containers, trays & sacks	690	* * *
5-digit containers, trays & sacks	690	* * *
3-digit containers or trays	691	* * *
ADC containers or trays	692	* * *
mixed ADC containers or trays	694	* * *
Media Mail and Library Mail Machinable Parcels—Presorted:		
5-digit scheme containers, trays & sacks	680	* * *
5-digit containers, trays & sacks	680	* * *
3-digit containers or trays	682	* * *
ADC containers or trays	683	* * *
mixed ADC containers or trays	684	* * *
Parcel Select Machinable Parcels:		
5-digit containers, trays & sacks	680	* * *
5-digit scheme containers, trays & sacks	680	* * *
ASF containers or trays	682	* * *
NDC containers or trays	683	* * *
mixed NDC containers or trays	684	* * *
Parcel Select DSCF and DDU Prices:		
5-digit containers, trays & sacks	688	* * *
5-digit scheme containers, trays & sacks	688	* * *
Parcel Select—Irregular (Nonmachinable) Parcels:		
3-digit containers or trays	691	* * *
Combined Package Services, Parcel Select, and Standard Machinable Parcels:		
5-digit containers, trays & sacks	688	* * *
5-digit scheme containers, trays & sacks	688	* * *
Combined Package Services, Parcel Select, and Standard Machinable Parcels:		
5-digit containers, trays & sacks	660	* * *
5-digit scheme containers, trays & sacks	660	* * *
ASF containers or trays	662	* * *
NDC containers or trays	663	* * *
mixed NDC containers or trays	664	* * *
Combined Package Services, Parcel Select, and Standard—All Parcels and Not Flat-Machinable pieces:		
5-digit containers, trays & sacks	603	* * *
5-digit scheme containers, trays & sacks	603	* * *
[Revise section title as follows:]		
Combined Package Services, Parcel, and Standard—Irregular Parcels 2 up to 6 oz (APPS-machinable):		
3-digit containers or trays	501	* * *
ADC containers or trays	502	* * *

Class and mailing	CIN	Human-readable content line
mixed ADC containers or trays	506	* * *
[Revise section title as follows:]		
Combined PSVC & STD—Irregular Parcels less than 2 oz, and tubes and rolls (not APPS-machinable):		
3-digit containers or trays	591	* * *
ADC containers or trays	592	* * *
Mixed ADC containers or trays	594	* * *

[Revise Exhibit 6.2.4 footnote #1 as follows:]

1. This information must be followed by a one-letter carrier route type description, followed by a 3-digit route number for the route to which the container, tray or sack is destined. At the mailer's option, one space is permitted between the type description and route number.

* * * * *

6.2.5 Line 3 (Origin Line)

[Revise the first sentence of 6.2.5 as follows:]

The origin line must appear below the content line in a location appropriate for a tray, approved alternative container, or sack as shown in Exhibit 6.2.2a.

* * *

* * * * *

[Revise title of 6.3 as follows:]

6.3 Additional Standards—Barcoded Tray Labels

6.3.1 Paper Stock, Size, and Color

[Revise the introductory sentence of 6.3.1 as follows:]

Barcoded tray labels must meet these specifications:

* * * * *

6.3.3 Barcode

The label barcode must meet these specifications:

* * * * *

b. *Information.* The barcode must represent three numeric elements:

* * * * *

[Revise the first sentence of item b3 and delete the second sentence in its entirety to remove reference to optional placement of processing codes on sack labels as follows:]

3. A 2-digit USPS processing code on all tray labels. * * *

* * * * *

[Delete items 6.4 through 6.4.3 in their entirety to remove reference to use of 1-inch sack labels and renumber current 6.5 and 6.6 as new 6.4 and 6.5 as follows]

6.4 Intelligent Mail Tray Labels

6.4.1 Definition

[Revise the first three sentences of 6.4.1 as follows:]

Intelligent Mail tray labels are 2-inch labels used on trays and approved alternate containers to provide unique identification within postal processing. 24-digit Intelligent Mail tray labels include only a 24 digit barcode printed in International Symbology Specification (ISS) Code 128 subset C symbology (see Exhibit 6.4.3). To facilitate the transition from 10-digit tray labels to 24-digit barcoded Intelligent Mail tray labels, an optional transitional label is also available. * * *

* * * * *

6.4.2 Transitional Intelligent Mail Tray Label Format

The general format for Intelligent Mail tray labels are as follows:

* * * * *

[Revise 6.4.2b as follows:]

b. Tray or alternate container presort destination (postal destination name).

* * * * *

6.4.3 24-Digit Intelligent Mail Tray Label

[Revise the first sentence of 6.4.3 as follows:]

Intelligent Mail tray labels, printed in the 24-digit format, can be used on all trays and approved alternative containers to uniquely identify each tray or alternate container in addition to each mailer or mail preparer. * * *

* * * * *

6.4.4 Intelligent Mail Tray Label Format

The core data elements for the Intelligent Mail tray label are as follows:

* * * * *

[Revise 6.4.4b as follows:]

b. Tray or alternate container presort destination (postal destination name).

* * * * *

6.4.6 Unique Serial Number

[Revise 6.4.6 as follows:]

The Intelligent Mail tray barcode can encode a unique identifier for each tray or alternate container.

* * * * *

Indexes and Appendices

* * * * *

Labeling Lists

L000 General Use

L001 5-Digit Scheme—Periodicals, Standard Mail, and Package Services Flats and Irregular Parcels

[Revise the introductory paragraph of L001 as follows:]

L001 describes the 5-digit scheme sort list for pallets, flat trays or approved alternate containers of Periodicals, Standard Mail, and Package Services flats and irregular parcels destined for multiple 5-digit ZIP Codes served by a single delivery unit. When the 5-digit scheme sort is used, mail for the 5-digit ZIP Codes shown in Column A must be combined on pallets or in trays (or alternate containers) as follows:

* * * * *

[Revise item c of L001 as follows:]

c. Merged 5-digit scheme or 5-digit scheme carrier routes trays or alternate containers labeled to the corresponding destination shown in Column B.

* * * * *

L002 3-Digit ZIP Code Prefix Matrix

L002 lists every 3-digit Zip Code prefix for mail destined to 3-digit, 3-digit scheme, and sectional center facility (SCF) destinations as follows:

* * * * *

[Revise items a through c of L002 as follows:]

a. 3-Digit ZIP Code Prefix: Use this column to find a 3-digit ZIP Code prefix. Those prefixes indicated by an N have been designated as 3-digit ZIP Codes for which the preparation of a 3-digit flat tray or approved alternate container is optional, and for which the preparation of the optional 3-digit pallet is prohibited.

b. Column A, 3-Digit Destinations: Use this information for Line 1 on 3-digit pallet or container placards (subject to the standards for the rate

claimed). Unique 3-digit cities are indicated by a U.

c. Column B, 3-Digit/Scheme Destinations: Use this information for Line 1 on 3-digit or 3-digit scheme pallet or container placards (subject to the standards for the price claimed). Line 2 of pallet or container placards for destinations indicated by an S must include either "SCHEME" or the specific information shown (3-digit groups by scheme group, where applicable, are shown in L003).

* * * * *

L009 Mixed ADCs—Periodicals, Package Services Flats and Irregular Parcels and Standard Mail Flats

[Revise the introductory sentence of L009 as follows:]

Mailers must use L009 to label mixed ADC bundles, flat trays or approved alternate containers of Periodicals, Standard Mail, Bound Printed Matter, Media Mail, and Library Mail flats. Mailers also must use L009 to label mixed ADC bundles, trays or alternate containers of Periodicals irregular parcels and Bound Printer Matter irregular parcels.

* * * * *

L010 NDC/ASF Entry—Standard Mail Letters and Package Services Irregular Parcels

[Revise the last sentence of the first paragraph in the preamble and the entire second paragraph as follows:]

* * * L010 indicates the label destination (Column B) for mixed flat trays or approved alternate containers of Package Services irregular parcels placed on ASF or NDC pallets.

Use L009 when labeling mixed ADC bundles, trays or alternate containers of automation price Periodicals and Standard Mail flats and barcoded Bound Printed Matter flats.

* * * * *

L011 Non-NDC/ASF Entry—Periodicals and Standard Mail Letters

* * * * *

[Revise the second paragraph of the preamble of L011 as follows:]

Use L009 when labeling mixed ADC bundles, flat trays or approved alternate containers and sacks of automation price Periodicals and Standard Mail flats and barcoded Bound Printed Matter flats.

* * * * *

L200 Periodicals and First-Class Mail

L201 Periodicals Origin Split and First-Class Mail Mixed ADC/AADC

[Revise the introductory paragraph of L201as follows:]

L201 describes the First-Class Mail surface transportation reach of an origin facility for use in preparing bundles, flat trays or approved alternate containers of Periodicals mail (including Periodicals labeled "news") and in preparation of First-Class Mail mixed pallets or similar containers.

For Periodicals addressed to destinations within the First-Class Mail surface reach of the origin facility, mailers must use L201 to prepare mixed origin ADC bundles, trays or alternate containers to enable integration of this volume into the First-Class Mail mailstream. Label bundles, trays or alternate containers of mail originating in the 3-digit entry ZIP Code in Column A for delivery to 3-digit ZIP Code destinations listed in Column B using the corresponding city, state, and ZIP Code information in Column C. Use L009 for the preparation of mixed ADC bundles, trays or alternate containers for any remaining pieces addressed to 3-digit ZIP Code destinations not listed in Column B.

For First-Class Mail letters, flats, and parcels originating in the 3-digit entry ZIP Code in Column A, label trays or alternate containers to the corresponding destination in Column C. Use "MXD" instead of "OMX." Ignore Column B.

* * * * *

L600 Standard Mail and Package Services

L601 Network Distribution Centers (NDCs)

L601 describes the service area by individual 3-digit ZIP Code prefix for sorting mail to NDC destinations. Use this list for:

* * * * *

[Revise item b of the introductory paragraph of L601 as follows:]

b. Standard Mail bundles, letter trays, flat trays or approved alternate containers on pallets.

* * * * *

[Revise item d of the introductory paragraph of L601 as follows:]

d. Bound Printed Matter bundles, flat trays or alternate containers on pallets.

* * * * *

[Revise item f of the introductory paragraph of L601 as follows:]

f. Presorted Media Mail and Presorted Library Mail to NDC destinations. For labeling mixed NDC flat trays, alternate containers and pallets, mailers must add "MXD" before the Column B information of the NDC serving the 3-digit ZIP Code prefix of the Post Office at which the mail is entered.

* * * * *

L602 ASFs

L602 describes the service area by individual 3-digit ZIP Code prefix for Standard Mail and Package Services mail that must be sorted to ASFs. Use this list for:

* * * * *

[Revise item b of the introductory paragraph of L602 as follows:]

b. Standard Mail bundles, letter trays, flat trays or approved alternate containers on pallets.

* * * * *

[Revise item d of the introductory paragraph of L602 as follows:]

d. Bound Printed Matter bundles, flat trays or alternate containers on pallets.

* * * * *

L606 5-Digit Scheme—Standard Mail, First-Class Mail, and Package Services Parcels

* * * * *

[Revise the last sentence of the second paragraph in the preamble of L606 as follows:]

* * * When used, all parcels for the 5-digit ZIP Codes shown in Column A must be combined in a 5-digit scheme sack(s), flat tray(s), approved alternate container(s), or on a 5-digit scheme pallet(s) labeled to the corresponding destination shown in Column B.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–5273 Filed 3–11–11; 8:45 am]

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Part III

Department of Agriculture

Rural Utilities Service

7 CFR Part 1738
Rural Broadband Access Loans and Loan Guarantees; Rural Broadband Access Loans and Loan Guarantees Program; Interim Rule and Notice

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1738

RIN 0572–AC06

Rural Broadband Access Loans and Loan Guarantees

AGENCY: Rural Utilities Service, USDA.

ACTION: Interim rule.

SUMMARY: The Rural Utilities Service, an agency delivering the United States Department of Agriculture's (USDA's) Rural Development Utilities Programs, hereinafter referred to as the Agency, is amending its regulation for the Rural Broadband Access Loan and Loan Guarantee Program (Broadband Loan Program). Since the Broadband Loan Program's inception in 2002, the Agency has faced and continues to face significant challenges in delivering the program due to the following factors: The competitive nature of the broadband market in certain geographic areas; the significant number of companies proposing to offer broadband service that are start-up organizations with limited resources; continually evolving technology; and economic factors such as the higher cost of serving rural communities. In addition, the Office of Inspector General, in a 2005 report, made recommendations to improve program efficiency. For these reasons and in an effort to improve program operation, the Agency published proposed changes to the program's regulation in the **Federal Register** on May 11, 2007. While the Agency was reviewing public comments and revising the rule, the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) was enacted and changed the statute under which the program operates. In accordance with the statute and taking into account the public comments received regarding the proposed rule to the extent possible, this interim rule presents the regulations that will govern the program until a final rule is published. The Agency is seeking comments regarding this interim rule to guide its efforts in drafting the final rule for the Broadband Loan Program.

DATES: This rule is effective on March 14, 2011. Comments must be submitted on or before May 13, 2011.

ADDRESSES: Submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and in the "Search Documents" box, enter RUS–06–Agency–0052, and select "Submit." To submit a comment, choose "Send a comment or submission," under the Docket Title. In order to submit your comment, the information requested on the "Public Comment and Submission Form" must be completed. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "How to Use this Site" link.

• *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS–06–Agency–0052.

Additional information about the Agency and its programs is available on the Internet at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: David Villano, Assistant Administrator, Telecommunications Program, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 5151–S, Washington, DC 20250–1590. Telephone number: (202) 720–9554, Facsimile: (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget under Executive Order 12866. In accordance with Executive Order 12866, an Economic Impact Analysis was completed, outlining the costs and benefits of implementing this program in rural America. The complete analysis is available from the Agency upon request. The following is the discussion of the Economic Benefits section of the Analysis

Economic Benefits of Broadband Deployment in Rural Areas

Bringing broadband services to rural areas does present some challenges. Because rural systems must contend with lower household density than urban systems, the cost to deploy fiber-to-the-home (FTTH) and digital subscriber line (DSL) systems in urban communities is considerably lower on a per household basis, making urban systems more economical to construct. Other associated rural issues, such as environmental challenges or providing wireless service through mountainous areas, also can add to the cost of deployment. A recent analysis by USDA's Economic Research Service concluded that broadband investment in rural areas yields significant economic and socio-economic gains:

Analysis suggests that rural economies benefit generally from broadband availability. In comparing counties that had broadband access relatively early (by 2000) with similarly situated counties that had little or no broadband access as of 2000, employment growth was higher and nonfarm private earnings greater in counties with a longer history of broadband availability. By 2007, most households (82 percent) with in-home Internet access had a broadband connection. A marked difference exists, however, between urban and rural broadband use—only 70 percent of rural households with in-home Internet access had a broadband connection in 2007, compared with 84 percent of urban households. The rural-urban difference in in-home broadband adoption among households with similar income levels reflects the more limited availability of broadband in rural settings.

Areas with low population size, locations that have experienced persistent population loss and an aging population, or places where population is widely dispersed over demanding terrain generally have difficulty attracting broadband service providers. These characteristics can make the fixed cost of providing broadband access too high, or limit potential demand, thus depressing the profitability of providing service. Clusters of lower service exist in sparsely populated areas, such as the Dakotas, eastern Montana, northern Minnesota, and eastern Oregon. Other low-service areas, such as the Missouri-Iowa border and Appalachia, have aging and declining numbers of residents. Nonetheless, rural areas in some States (such as Nebraska, Kansas, and Vermont) have higher-than expected broadband service, given their population characteristics, suggesting that policy, economic, and social factors can overcome common barriers to broadband expansion.

In general, rural America has shared in the growth of the Internet economy. Online course offerings for students in primary, secondary, post-secondary, and continuing education programs have improved educational opportunities, especially in small, isolated rural areas. And interaction among students, parents, teachers, and school administrators has been enhanced via online forums, which is especially significant given the importance of

ongoing parental involvement in children's education.

Telemedicine and telehealth have been hailed as vital to health care provision in rural communities, whether simply improving the perception of locally provided health care quality or expanding the menu of medical services. More accessible health information, products, and services confer real economic benefits on rural communities: reducing transportation time and expenses, treating emergencies more effectively, reducing time missed at work, increasing local lab and pharmacy work, and savings to health facilities from outsourcing specialized medical procedures. One study of 24 rural hospitals placed the annual cost of not having telemedicine at $370,000 per hospital. (*See http://www.ers.usda.gov/Publications/ERR78/ERR78.pdf,* at pages iv and 24.)

Most employment growth in the U.S. over the last several decades has been in the service sector, a sector especially conducive for broadband applications. Broadband allows rural areas to compete for low- and high-end service jobs, from call centers to software development, but does not guarantee that rural communities will get them. Rural businesses have been adopting more e-commerce and Internet practices, improving efficiency and expanding market reach. Some rural retailers use the Internet to satisfy supplier requirements. The farm sector, a pioneer in rural Internet use, is increasingly comprised of farm businesses that purchase inputs and make sales online. Farm household characteristics such as age, education, presence of children, and household income are significant factors in adopting broadband Internet use, whereas distance from urban centers was not a factor. Larger farm businesses are more apt to use broadband in managing their operation; the more multifaceted the farm business, the more the farm used the Internet.[1]

An analysis based on approximately $1.8 billion in approved loans in the Farm Bill Broadband Program (based on multiple technology platforms) yielded the following results (numbers have been rounded):

- Number of communities funded: 2,800.
- Average cost per community: $640,000.
- Total subscribers: 1.3 million.

[1] Broadband Internet's Value for Rural America, Peter Stenberg, Mitch Morehart, Stephen Vogel, John Cromartie, Vince Breneman, and Dennis Brown.

Most recently, the agency has concluded funding the American Recovery and Reinvestment Act (Recovery Act) Broadband Initiatives Program (BIP) that financed the same types of facilities and entities that are funded under this Farm Bill program.

As noted in the ERS study, rural areas with dispersed populations or demanding terrain generally have difficulty attracting broadband service providers because the fixed cost of delivering broadband service can be too high. Yet broadband is a key to economic growth. For rural businesses, broadband gives access to national and international markets and enables new, small, and home-based businesses to thrive. Broadband access affords rural residents the connectivity they need to obtain healthcare, education, financial, and many other essential goods and services.

The Recovery Act authorized RUS to issue loans and grants to projects that extend broadband service to unserved and underserved rural areas. The funding provided by the Recovery Act is increasing the availability of broadband and stimulating both short- and long-term economic progress. RUS BIP completed two funding rounds, making a significant investment in projects that will enhance broadband infrastructure in scores of rural communities. This represents a critical investment, designed to rebuild and revitalize rural communities. Without this funding, many communities could not cover the costs of providing broadband service to homes, schools, libraries, healthcare providers, colleges, and other anchor institutions.

RUS awarded $3.4 billion to 297 recipients in 45 States and 1 U.S. territory for infrastructure projects. Eighty-nine percent of the awards and 92 percent of the total dollars awarded are for 285 last-mile projects ($3.25 billion), which will provide broadband service to households and other end users. Four percent of the awards and five percent of the total dollars awarded are for 12 middle-mile projects ($173 million) that will provide necessary backbone services such as interoffice transport, backhaul, Internet connectivity, or special access to rural areas. The projects funded will bring broadband service to 2.8 million households, reaching nearly 7 million people, 364,000 businesses, and 32,000 anchor institutions across more than 300,000 square miles. These projects also overlap with 31 tribal lands and 124 persistent poverty counties, traditionally the most costly to serve areas.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 10.886, Rural Broadband Access Loans and Loan Guarantees. The Catalog is available on the Internet and the General Services Administration's (GSA's) free CFDA Web site at *http://www.cfda.gov.* The CFDA Web site also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's online bookstore at *http://bookstore.gpo.gov.*

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded From Executive Order 12372" (50 FR 47034).

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service, an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

Comments on this notice must be received by May 13, 2011.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

Title: 7 CFR 1738, Rural Broadband Loan and Loan Guarantee Program.

OMB Control Number: 0572–0130.

Type of Request: Revision of a currently approved information collection package.

Abstract: USDA Rural Development, through the Rural Utilities Service, is authorized by Title VI, Rural Broadband Access, of the Rural Electrification Act of 1936, as amended (RE Act), to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities in States and Territories of the United States. In conjunction with this Interim Rulemaking, RUS is submitting a revised information collection package to OMB as required by the Paperwork Reduction Act of 1995, which will include revisions authorized by the 2008 Farm Bill. The information collection package for 7 CFR part 1738 includes estimated burden related to the application process for the Rural Broadband Loan and Loan Guarantee Program. Since the inception of the program in 2003, the agency has tried to accurately determine the burden to respondents applying for a Rural Broadband Loan including soliciting comments from the public. The items covered by this collection include forms and related documentation to support a loan application, including Form 532 and its supporting schedules.

The 2008 Farm Bill provided that the agency take steps to reduce, to the maximum extent practicable, the cost and paperwork associated with applying for a Broadband loan. The information required to process an application is the minimum amount of information necessary to fulfill the statutory requirements for ensuring that loans made under this Act are technically and financially feasible and are capable of being repaid in full, as required. Notwithstanding that requirement, the agency has taken significant actions to reduce, to the extent practicable, the cost and paperwork associated with applying for a loan for all applicants, including first time applicants and start-up applicants. Specifically, the agency has:

(1) Automated its mapping requirements for identifying proposed service territories;

(2) Created an online "public notice" process;

(3) Reduced the Market Survey requirements for certain proposals;

(4) Reduced the Equity Contribution requirements; and

(5) Identified most areas that are not eligible for financing.

Each of these is discussed in more detail, as follows:

Automated Mapping: Previously, applicants were required to submit "hard copies" of their proposed funded service areas. This was laborious, costly in some instances, and prone to inaccuracies. Under the new rule, applicants will be able to submit their proposed funded service territory online though an automated mapping tool created by the agency, saving time and money. In addition, any changes to the proposed service areas can be readily made without the creation of new "paper" maps.

Online Public Notice: Previously, applicants were required to publish in the local newspaper in each jurisdiction their intent to provide service to that area. This requirement proved costly and burdensome, particularly for new or start-up entities. Under the new rule, applicants will be able to post their notice(s) of intent to provide service online, saving time and significant expense.

Market Survey Requirement: In its proposed rule published in 2007, the agency proposed not to require market surveys from applicants that were proposing to obtain a market penetration of 20 percent or less. The 2008 Farm Bill adopted this concept and provides authority to require a market survey if the applicant proposes a market penetration rate of over 20 percent. This requirement will greatly reduce the burden and expenditure, particularly for small start-ups and new market entrants.

Equity Contribution Requirement: Similar to the Market Survey requirement noted above, the agency's 2007 proposed rule sought to reduce the level of up front equity contributions from the current 20 percent requirement to 15 percent. Again, the 2008 Farm Bill adopted this concept and reduced the minimum equity contribution to 10 percent. All applicants must demonstrate this minimum requirement at the time they submit their application.

Addition Cash Requirement: In addition to the 10 percent minimum equity requirement, the Agency is also implementing a procedure to analyze the submitted business plan to determine if an equity position greater than 10 percent will be required to sustain the operation. If the analysis demonstrates that additional cash will be required to sustain the operation, the applicant must agree to provide the additional capital and demonstrate their ability to do so prior to loan approval.

Indentifying Ineligible Areas: The agency has created several online tools for indentifying areas that are not eligible for new financing because they have already received agency funds. In addition, through an online mapping tool, potential applicants can determine if the area they wish to serve meets the eligibility requirements of a "rural area" as defined by the statute. This will save time in identifying areas that are eligible for financing and prevent wasted time spent applying for areas that are not eligible.

The agency seeks comments on its estimate of burden related to the application process for the Rural Broadband Program and welcomes comments related to further reducing application paperwork and costs. Specifically comments should address the estimation of hour and cost burden associated with each component of Form 532. Burden on respondents is considered the time, effort, and financial resources expended to generate, maintain, retain, disclose, or provide information to or for a Federal Agency. The agency is also interested in determining the information that Broadband applicants would have on hand in a format that could be readily provided for the loan application and which items would be prepared by parties outside the applicant's organization. Comments may be sent to Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Development, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 5159 South Building, Washington, DC 20250–1522 or via e-mail to: *michele.brooks@usda.gov.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 89 hours per response.

Respondents: Businesses and Not-for-profit institutions.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 10,545 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

National Environmental Policy Act Certification

The Administrator has determined that this rule will not significantly affect the quality of the human environment as defined by the National

Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Agency is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with Sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

USDA has undertaken a series of regulation Tribal consultation sessions to gain input by Tribal officials 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 become 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.

E-Government Act Compliance

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Implementation Guidelines

Applications that were submitted after the Farm Bill was enacted (June 18, 2008) have not been processed pending publication of this Interim Rule. These applications will be reviewed in accordance with subpart E of part 1738, and information about any deficiencies and the time frame allowed for addressing them will be communicated to the applicants in writing.

Background

A. Introduction

The Agency improves the quality of life in rural America by providing investment capital for deployment of rural telecommunications infrastructure. Financial assistance is provided to rural utilities; municipalities; commercial corporations; limited liability companies; public utility districts; Indian tribes; and cooperative, nonprofit, limited-dividend, or mutual associations. In order to achieve the goal of increasing economic opportunity in rural America, the Agency finances infrastructure that enables access to a seamless, nationwide telecommunications network. With access to the same advanced telecommunications networks as its urban counterparts, especially broadband networks designed to accommodate distance learning, telework, and telemedicine, rural America will eventually see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. The Agency shares the assessment of Congress, State and local officials, industry representatives, and rural residents that broadband service is a critical component to the future of rural America. The Agency is committed to ensuring that rural America will have access to affordable, reliable, broadband services and to provide a healthy, safe, and prosperous place to live and work.

B. Regulatory History

On May 13, 2002, the Farm Security and Rural Investment Act of 2002, Public Law 107–171 (2002 Farm Bill) was signed into law. The 2002 Farm Bill amended the Rural Electrification Act of 1936 to include Title VI, the Rural Broadband Access Loan and Loan Guarantee Program (Broadband Loan Program), to be administered by the Agency. Title VI authorized the Agency to approve loans and loan guarantees for the costs of construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities. Under the 2002 Farm Bill, the Agency was directed to promulgate regulations without public comment. Implementing the program required a different lending approach for the Agency than it employed in its earlier telephone program because of the unregulated, highly competitive, and technologically diverse nature of the broadband market. Those regulations were published on January 30, 2003.

In an attempt to enhance the Broadband Loan Program and to acknowledge growing criticism of funding competitive areas, the Agency proposed to amend the program's regulations on May 11, 2007 at 72 FR 26742 to make eligibility of certain service areas more restrictive than set out in the 2002 Farm Bill. In addition to eligibility changes, the proposed rule included, among others, changes to persistent problems the Agency had encountered while implementing the program over the years, especially regarding equity requirements, the market survey, and the legal notice requirements. As the Agency began analysis of the public comments it received on the proposed regulations, the Food, Conservation, and Energy Act of 2008, more commonly known as the 2008 Farm Bill, was working its way through Congress. The proposed rule and key aspects of the public comments were shared with Congress during its deliberations, and the majority of the proposed changes in the proposed rule were incorporated into the legislation, with and without modification. For instance, the proposed rule lowered the equity requirement from 20 percent of the loan value to 10 percent. Congress enacted that change.

Other changes the Congress incorporated were several new

restrictions not found in the 2002 Farm Bill. These were in response to growing public criticism of federally funded competition. First, funding is restricted in areas that contained 3 or more incumbent service providers, which is defined as serving not less than 5 percent of the proposed service area. Second, a requirement was added that at least 25 percent of the proposed service area not have access to more than one incumbent service provider. And third, for incumbent service providers that were merely upgrading the quality of broadband service in their existing service territory, the prior restrictions on competition would be waived.

In response to the growing national debate on what was rural, the 2008 Farm Bill relaxed the restriction to permit urbanized areas that were not adjacent and contiguous to areas with a population of more than 50,000 inhabitants. And lastly, the 2008 Farm Bill incorporated the concept of not requiring market studies for applicants that relied on a penetration rate of less than 20 percent for the loan to be feasible.

In the public interest of having a Broadband Program in place to quickly address the needs of the hundreds of applications that were not funded under the Recovery Act, and in light of the fact that the great majority of changes herein are mandated by the 2008 Farm Bill, or have been proposed in the Agency's prior rule, put out for comment, and subsequently adopted by Congress in the 2008 Farm Bill itself, the Agency is moving forward with certain changes to the Broadband Loan Program by publishing an interim rule. The Agency also believes that this approach is consistent with Congressional intent, given that in section 6110(b) of the 2008 Farm Bill, Congress authorized the Agency to publish these regulations in an interim rule. Notwithstanding the public interest and specific authority previously discussed, the Agency is seeking comment from the public, which will ultimately be incorporated into a final rule. Specifically, the Agency seeks comment on priority of applications, application requirements, the method of determining which applicants could be eligible for 4 percent interest rates, the notice requirement, and processing. In addition, the Agency is seeking comment for future changes to its Broadband Program based on "lessons learned" from the recently concluded Broadband Initiatives Program under the Recovery Act. The Agency believes that public comment on these issues will help the Agency make future adjustments to the Broadband Program to make it more responsive to the needs of rural America. One lesson that the Agency has already learned to date is that the broadband industry is dynamic and that the Broadband Program will need to continue to evolve to be responsive to the needs of the industry.

The Agency urges all interested parties to provide comments via the Internet or postal mail. Please see instructions on how to do so in the **ADDRESSES** section of this document.

Existing location in 2003 final regulation	New location in 2009 interim rule	Action taken	Content change
Subpart A—General:			
§ 1738.1 General Statement.	1738.1	Modified	Revised paragraph (a) to include purpose of loan. Deleted existing paragraphs (b) and (c). Added new paragraph (b) with reference to Agency's Web site.
§ 1738.2 Definitions	1738.2	Modified	Because they are not used in the interim rule, the Agency removed the following definitions: Broadband pilot. Eligible rural community. Initial loan. Interim construction. Loan funds. Mortgage. Private loan guarantee. Release of funds. RUS. RUS telecommunications borrower. The Agency added the following definitions to clarify existing regulations and support rule modifications: Advance. Agency. Arm's length transaction. Broadband borrower. Broadband lending speed. Broadband loan. Build-out. Competitive analysis. Cost share. Customer premise equipment (CPE). Derivative. Equity. Financial feasibility. Guaranteed amount debt derivative. Guaranteed amount equity derivative. Guaranteed amount equivalent. Guaranteed loan amount. Guaranteed loan note. Guaranteed loan portion. Guaranteed loan portion amount. Guaranteed loan portion note. Incumbent service provider. Indefeasible right to use agreement. Loan guarantee.

Existing location in 2003 final regulation	New location in 2009 interim rule	Action taken	Content change
			Loan guarantee documents. Loan funds. Market survey. Pre-loan expense. Funded service area. Reject. Reseller. Rural area. Security documents. Service level objectives (SLOs). Service provider. Service territory. Start-up. System of accounts. Telecommunications loan. Underserved household or Underserved area. Unguaranteed amount equivalent. Unguaranteed loan amount. Unguaranteed loan portion amount.
Subpart B—Loan Purposes and Basic Policies:			
§ 1738.10 General	1738.1(a)	Modified/relocated	Language regarding purpose, paragraph (a), was merged with language in 1738.1(a).
	1738.51(f)	Modified/relocated	Refinancing language in (b) was modified and moved.
	1738.153	Relocated	Language in (c) has been moved to § 1738.153(d).
	1738.206	Relocated	Language in (d) has been moved to § 1738.206—Evaluation for feasibility.
§ 1738.11 Availability of broadband service.	1738.204	Modified/relocated	Public notice language moved to § 1738.204.
	1738.203	Modified/relocated	Paragraphs (a) and (b) incorporated into prioritization scheme presented in § 1738.203.
§ 1738.12 Location of facilities.	1738.51	Modified/relocated	Location of facilities now addressed in § 1738.51(a).
§ 1738.13 Allocation of funds.	1738.203	Modified/relocated	Moved to § 1738.203(c)—Priority for processing loan applications and streamlined to reference the statute.
§ 1738.14 One-time priority for unfunded applications from the broadband pilot program.	Deleted	Deleted	No longer relevant.
§ 1738.15 Priorities	1738.203	Modified/relocated	Incorporated into prioritization scheme presented in § 1738.203.
§ 1738.16 Eligible entities.	1738.101	Modified/relocated	Moved language regarding types of eligible entities to 1738.101(a).
§ 1738.17 Civil rights ..	1738.156	Relocated	Moved language to new section that lists all applicable Federal requirements.
§ 1738.18 Minimum and maximum loan amounts.	1738.151	Relocated	Moved to 1738.151(b) and (c).
§ 1738.19 Facilities financed.	1738.51	Modified/relocated	1738.51 Eligible loan purposes replaces paragraphs (a) through (d) in previous rule. 1738.51(b)—new language regarding start-up and overhead costs is a further clarification that these costs are eligible for financing. 1738.51(c)—new language (replacing old 1738.19(b)) limiting the cost of the capital lease for the first 5 years of the loan amortization period. 1738.22(d)—new language clarifies Agency practices regarding 1738.19(c) in the previous rule. 1738.51(e)—new language regarding pre-loan expenses.

Existing location in 2003 final regulation	New location in 2009 interim rule	Action taken	Content change
	1738.52	Modified/relocated	1738.52 Ineligible loan purposes replaces paragraphs (e)—(f) in previous rule. This includes modified language regarding financing of CPE equipment; applicants often sell the CPE rather than lease it to the end-user. The original intent was that this equipment would be used as collateral; however, because CPE is often physically out of the control of the applicant and because the value of end-user equipment depreciates quickly, we have determined that other arrangements offer the Agency a similar level of security, while offering the applicant more flexibility under our rules. Paragraph (g) from previous rule deleted as it referenced actions taken prior to October 2004. The issues addressed in paragraph (h) from the previous rule is addressed in 1783.102 (Eligible Service Area). Paragraph (i) from the previous rule deleted, as the loan review process is expected to address this type of concern.
§ 1738.20 Credit support requirement.	1738.207 & 208	Modified/relocated	Now called Equity requirement and Additional cash requirement. Applicants must have equity equal to 10% of the loan amount. Added clarification on the use of letters of credit and bonds to meet equity requirements. Modified cash requirement language so that cash requirements are considered at time of feasibility determination rather than for eligibility.
§ 1738.21 Interim financing.	1738.252	Modified/relocated	Revised for clarification. No substantive change.
§ 1738.22 Loan security	1738.154	Modified/relocated	Requirement unchanged, but reworded to provide further clarity.
	1738.208(b)	Relocated	Language regarding TIER requirement moved.
Subpart C—Types of Loans:			
§ 1738.30 Rural broadband access loans and loan guarantees.	1738.151 & 152	Modified/relocated	Language regarding cost-of-money loans in paragraph (a) of previous rule moved and revised for clarification. No substantive changes were made. Language regarding 4% loans in paragraph (b) of previous rule revised. When they are available, the Agency will use 4% loans to assist applicants in meeting financial feasibility requirements. Unless announced via a notice in the FEDERAL REGISTER, no other criteria apply with regard to eligibility for receipt of a 4% loan.
	1738.301–307	Relocated	Language regarding loan guarantees in paragraph (c) of the previous rule now appears in Subpart G—Loan Guarantee. No substantive changes have been made.
§ 1738.31 Full faith and credit.	1738.308	Relocated	Language has been relocated.
Subpart D—Terms of Loans:			
§ 1738.40 General	1738.153	Modified/relocated	Revised for clarification. No substantive change.
	1738.155	Modified/relocated	Language regarding establishing terms and conditions on a case-by-case basis moved to § 1738.155—Special terms and conditions. Language modified to provide additional clarity.
§ 1738.41 Payments on loans.	1738.153	Modified/relocated	Revised for clarification. No substantive change.

New sections	Subject matter	Content
Subpart C—Eligibility Requirements:		
1738.102	Eligible service area	The rules specified in this section codify requirements included in the 2008 Farm Bill.
1738.103	Eligible service area exceptions for broadband facility upgrades.	The rules specified in this section codify requirements included in the 2008 Farm Bill.
1738.104	Preliminary assessment of service area eligibility.	The rules specified in this section codify requirements included in the 2008 Farm Bill.
Subpart D—Direct Loan Terms:		
1738.156	Other Federal requirements	Codifies standard requirements existing in all broadband loan documents.

New sections	Subject matter	Content
Subpart E—Application Review and Underwriting:		
1738.201	Application submission	New section that clarifies that applicants are encouraged to submit applications through the General Field Representative in their state for review prior to final submission. Applications will still be accepted at the National Office.
1738.202	Elements of a complete application	This new section clearly specifies what must be included in an application before it will be reviewed by the Agency. The Agency believes this demonstrates its commitment to a standardized and more transparent process.
1738.205	Notification of completeness	This new section codifies currently existing internal processes and is designed to help applicants understand the post-application process. The Agency believes this demonstrates its commitment to a standardized and more transparent process.
1738.206	Evaluation for feasibility	This new section codifies currently existing internal processes and is designed to help applicants understand the post-application process. The Agency believes this demonstrates its commitment to a standardized and more transparent process.
1738.209	Market survey	The rules specified in this section codify requirements included in the 2008 Farm Bill.
1738.210	Competitive analysis	The rules specified in this section codify existing requirements published in RUS Bulletin 1738–1. Applicants are aware of the requirements and currently comply with them.
1738.211	Financial information	The rules specified in this section codify existing requirements published in RUS Bulletin 1738–1. Applicants are aware of the requirements and currently comply with them.
1738.212	Network design	The rules specified in this section codify existing requirements published in RUS Bulletin 1738–1. Applicants are aware of the requirements and currently comply with them. New language reserving the Administrator's right to modify the requirements on a case-by-case basis.
1738.213	Loan determination	This new section codifies currently existing internal processes and is designed to help applicants understand the post-application process. The Agency believes this demonstrates its commitment to a standardized and more transparent process.
Subpart F—Closing, Servicing, and Reporting:		
1738.251	Loan offer and loan closing	Codifies standard requirements currently existing in broadband loan closing documents.
1738.252	Construction	Codifies standard requirements currently existing in broadband loan closing documents.
1738.253	Servicing	Codifies standard requirements currently existing in broadband loan closing documents.
1738.254	Accounting, reporting, and monitoring requirements.	Codifies standard requirements currently existing in broadband loan closing documents.

C. Rule Changes

The following summarizes the changes introduced in this rule. The changes are presented in the order in which they appear within the interim rule.

Subpart A—General

Section 1738.1 Overview

Section 1738.1 (b) of the proposed rule contained detailed procedural information including specific contact information that may change over time. This information has been removed in favor of a general reference to the Agency's Web site to avoid the need for future revisions to the regulation based on changes in personnel or procedural guidance. Section 1738.1(c) of the proposed rule stated that no fees or charges will be assessed for broadband loans. This policy statement has been removed from the rule. The Agency does not presently assess fees on broadband loans. Should the Agency's fee policy change, it would be reflected in a separate **Federal Register** notice.

Section 1738.2 Definitions

To provide additional clarity throughout the regulation, the Agency has added several new definitions and removed definitions for terms not used in the interim rule. Each addition to and removal from the 2003 rule is listed in the preceding crosswalk. A number of definitions were refined in the process of responding to public comments on the proposed rule and adapting the rule in response to the 2008 Farm Bill. Key substantive changes in existing definitions are described below, as are new terms relating to policies set forth in this rule that may require explanation.

Broadband Lending Speed

The "broadband lending speed" is the minimum bandwidth requirement, as published by the Agency in a notice in the **Federal Register**, that an applicant must deliver to the customer in order for the Agency to fund a broadband loan. In order to treat all emerging technologies equally, the Agency may designate a different broadband lending speed for fixed and mobile broadband service. Broadband lending speeds may be different from the minimum rate of data transmission required to determine the availability of broadband service when qualifying a service area. The Agency

feels strongly that in order to be a prudent lender and steward of taxpayer dollars, it must lend to entities capable of repaying loans received from the Agency. As such, the Agency has added this term to make clear that it will only loan funds to entities that plan to offer service at a level that keeps pace with technological innovations while meeting the demands of customers in rural America. The Agency also believes that the constant changes and rapid technological improvements in the broadband industry necessitate that the Agency be flexible in reviewing and, if necessary, adjusting this speed on as frequent as an annual basis.

Equity

The Broadband Loan Program has historically used the term "credit support" in lieu of "equity." The Farm Bill uses the terms "cost share," "credit support," and "equity." In an effort to make this regulation and associated program documents more readable, the Agency has used the commonly-understood term "equity" in lieu of "cost share." Equity and other financial requirements which enhance the security of the loan are all elements of "credit support." For the purpose of Sec. 306F of the Rural Electrification Act of 1936, (SUTA), equity requirements in this program shall have the same meaning as "matching fund requirements." SUTA provides statutory authority for the Agency to make certain adjustments in the requirements of programs with respect to projects on trust territories like Native American reservations. This authority is discussed in more detail below.

Projected Revenues

In addition to the minimum 10 percent equity requirement, the Agency will now allow the use of projected revenues to be considered in determining if more than a 10% equity position is required to maintain a viable operation. For start-up operations and operations that have not demonstrated a positive cash flow, the Agency will only allow fifty percent of the projected revenues to be used to demonstrate a sustainable operation. A financial analysis of the business plan will be performed with a 50 percent reduction in projected revenues to determine if an equity position greater than 10 percent is required. If this analysis demonstrates that a 10 percent equity position is not sufficient to ensure a sustainable operation, the equity requirement will be increased to the appropriate level. We are inviting comment on the use of fifty percent of the projected revenues versus a higher or lower percentage.

Fiscal Year

The term "fiscal year" had previously been defined with reference to the US government's fiscal year. However, the majority of the references to fiscal years in the interim regulation refer to the applicant's fiscal year. Therefore, the term has been redefined. In the two places where the Federal fiscal year is referenced, this is specifically noted.

Incumbent Service Provider

Questions have been raised about the meaning of the statute's use of the term "providing broadband service." Some have argued that it could mean either service providers with a "take-up rate" that meets the specified threshold, or service providers that offer services that "pass by" area households without regard to whether the services are actually purchased by the households. The Agency has concluded that the word "providing" clearly indicates the Congressional intent that the incumbent service provider determination should be based on the services actually purchased by households, not just on the number of households to which services are offered. This interpretation is reflected in the definition, which defines incumbent service provider as one that *provides* broadband service to at least five percent of the households in an applicant's proposed service area rather than one that "offers" such service.

Rural Area

There were 19 comments received relating to the definition of an "Eligible Rural Community." This issue is significant in that it directly determines which constituencies can receive the benefits of the Broadband Loan Program. The 2008 Farm Bill defines a rural area as any area outside of a city, town, or incorporated area that has a population of no more than 20,000 inhabitants provided that it is not in an Urbanized Area (as defined by the Census Bureau) that is contiguous and adjacent to a city or town with a population of 50,000 inhabitants. This definition replaces the definition of "eligible rural community" provided in the proposed rule.

Service Territory

While the concept of a "service area" has been traditionally used within the program, the 2008 Farm Bill refers to a "service territory." The Agency considers the two terms to be synonymous. The interim rule continues to use the commonly-accepted term "service area." The term "service territory" has been defined in order to clarify how the language used in the regulation links to the language in the 2008 Farm Bill but is not used in the interim rule.

Underserved Household or Underserved Area

This definition was added to define an underserved household or area as one that is not offered broadband service at all, or is offered broadband service by only one incumbent service provider, a requirement added by the 2008 Farm Bill.

Section 1738.2 Substantially Underserved Trust Areas

The Agency has developed this interim rule in accordance with USDA's Action Plan for Tribal Consultation and Collaboration submitted in response to President Obama's Memorandum on Tribal Consultation and Collaboration executed November 5, 2009 during the White House Tribal Leaders Conference (USDA Action Plan), President Clinton's Executive Order 13175, titled "Consultation and Coordination with Indian Tribal Governments" (November 6, 2000), and various USDA Departmental Regulations on Tribal Consultation, including DR 1350–001 (September 11, 2008). DR 1350–001 directs the Agency "to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by it with a general rule toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate" (DR 1350–001 ¶ 11). Section 6105 of the Farm Bill amended the RE Act by adding section 306F providing the Secretary additional statutory authorities which have been delegated to the Administrator that may be initiated in order to improve the availability of RUS programs in communities located in trust lands (as defined in section 3765 of title 38, United States Code) that the Administrator has determined are in high need of the benefits of those programs.

In order to provide effective consultation and collaboration in the carrying out of its roles and responsibilities, the Agency has been actively participating in a series of consultations across the country with the implementation of its broad authorities in section 306F as a focal point. Because these consultations are ongoing and the USDA Action Plan announced the development of a new

comprehensive Departmental Regulation that will replace all existing Departmental Regulations on Tribal Consultation (including DR 1350–001), the implementation of section 306F is still under development. Nevertheless, enough is known at this point to make it appropriate to specifically recognize in this interim rule the additional authorities that the 2008 Farm Bill created for the Secretary by explicitly increasing the Secretary's legal authority for waivers in designated communities in trust lands, which include Tribal communities and others as more specifically provided in section 306F. This authority has been delegated to the Administrator (*See* 7 CFR 2.17(a)(20) and 2.47(a)(1)).

This interim rule acknowledges these changes in law and reflects the results of consultations on section 306F concluded so far. The Agency has done so by adding a new § 1738.3 entitled "Substantially underserved trust areas" as an initial step in applying the broad authority contained in section 306F specifically to the Broadband Loan Program. The addition of § 1738.3 necessitated a related change in § 1738.2 to expand the definition of "equity" in order to clarify that "equity" as used in this interim rule includes the term "cost share" and is included in the term "credit support" as used in Title VI of the RE Act and for the purposes of section 306F in this program is the same as "matching fund requirements." The Agency will proceed case-by-case in applying § 1738.3 to particular applications considered under this interim rule. Accordingly, it is essential that applicants that believe § 1738.3 should be applied to their requests consult with the Agency early in the development of their applications to determine how § 1738.3 might affect the application of other sections of this interim rule in their particular cases. The Agency invites comments which, together with the results of future consultations and developments in the implementation of USDA's Action Plan, will be considered in developing the final version of this interim rule. From time to time, the Agency may also publish further guidance for use of § 1738.3 either in the form of notices or guidance documents specifically regarding the Broadband Loan Program or in notices, guidance documents or rules relating to the general subjects of Section 306F or Tribal consultation and collaboration.

Subpart B—Eligible and Ineligible Loan Purposes

The Farm Bill imposed no restrictions regarding eligible and ineligible loan purposes, nor did public comments on the proposed rule suggest the need for any change. Therefore, the substantive requirements in this subpart remain largely unchanged from the requirements which were presented in subpart C of the proposed rule. The material has been edited for clarity.

Section 1738.51 Eligible Loan Purposes

This section requires that broadband loan funds be used to fund the construction, improvement, or acquisition of facilities required to provide broadband service. It specifies certain conditions concerning start-up and overhead costs, leasing facilities, acquisitions, pre-loan expenses, and refinancing telecommunications loans made under the RE Act. The discussion of acquisitions has been expanded to include all of the provisions associated with acquisition in one place. This involved moving the item concerning acquiring majority stock and those items concerning acquisitions from affiliates out of the list of ineligible expenses and reframing them as conditions of acquisition under eligible expenses. This was done in order to place all restrictions associated with acquisition together. No substantive change is intended.

A discussion of pre-loan expenses is provided in § 1738.51(e). This paragraph has been edited for clarity and expanded to specify that these expenses may be incurred prior to the date on which notification of a complete application is issued. This is consistent with current Agency practice. No substantive change is intended.

Section 1738.52 Ineligible Loan Purposes

This section excludes certain expenses associated with acquisition of stock, facilities, or equipment of an affiliate, customer premise equipment, vehicles, and systems or facilities that are not designed and constructed in accordance with applicable requirements. The discussion of expenses related to an acquisition has been moved to § 1738.51. For the sake of clarity, the interim rule specifies that costs incurred prior to the date on which notification of a complete application is issued are not considered eligible loan purposes with the exception of eligible pre-loan expenses which are clarified in the regulation. In addition, three ineligible purposes that had been present in the program's application guide, but not listed in the proposed rule, have been added. These ineligible purposes include: broadband facilities leased under the terms of an operating lease; merger or consolidation of entities; and operating expenses of the project. The addition of these ineligible purposes is intended to ensure clarity and completeness in the regulation and does not represent a change in the Agency's policy.

Subpart C—Eligibility Requirements

Section 1738.101 Eligible Applicants

This section specifies criteria that entities must meet in order to be eligible for a broadband loan. Generally, any entity that is not an individual or a partnership is eligible for a broadband loan provided that the applicant meets certain program requirements. Requirements include that applicants: (1) Agree to complete their build-out within three years; (2) demonstrate their ability to provide the service at the Agency's broadband lending speed; (3) demonstrate an equity position equal to at least 10 percent of requested loan amount; and (4) understand that the Administrator may require additional security in order to ensure financial feasibility. Each of these requirements was included in some form in the proposed rule and the Agency received several comments with regard to three of them.

The proposed rule would have required that borrowers complete the build-out of their broadband facilities within three years. The Agency received 10 comments about this requirement, half in favor and half against. The 2008 Farm Bill imposed a statutory requirement that the service described in the loan application be completed within three years. Therefore, § 1738.101(b)(2) of the interim rule requires that all applicants agree to complete the build-out of the broadband service described in their application within three years from the date the borrower is notified that loan funds are available.

The requirement to provide service at the broadband lending speed is stated at § 1738.101(b)(3). While the requirement is succinct, it represents a shift in the Agency's policy and affects definitions and requirements in other parts of the interim rule, including § 1738.102(b) concerning protection of current borrowers' service areas.

After publication of the proposed rule, the Agency received eight comments concerning the speed at which broadband service is provided, nearly all of which suggested that the Agency should change the definition of broadband service to be based on a higher transmission speed. The Agency believes the availability of affordable, high-quality broadband service is a key

factor in promoting and protecting the economic growth and well-being of rural communities. The Agency also believes that as a steward of taxpayer dollars, it should lend money to projects that will provide service at a level for which there is customer demand. As such, the Agency agrees with the commenters that urged the Agency to define broadband at a faster speed.

The concept of broadband speed matters in two different contexts in this regulation. First, it determines what types of projects will be eligible for a broadband loan. Second, it determines which existing providers will be classified as incumbent service providers for the purpose of determining what geographic areas are eligible for a broadband loan. The implications of setting higher or lower speed requirements differ for the two contexts. Specifically, setting a significantly higher speed could open up vast areas of the country as eligible areas, limiting the program's impact on those areas that are most seriously limited in their ability to access broadband service. A higher speed also would result in providing government funding in markets where competition (*i.e.,* three or more service providers) already exists at more modest speeds. On the other hand, requiring higher speeds would help ensure that those areas that receive assistance through a broadband loan receive cutting-edge service that will remain competitive, and therefore financially viable, farther into the future.

The Agency has resolved this dilemma by introducing two different concepts related to the speed of transmission in the interim rule. The term "broadband service" is used in the context of determining whether the services offered by existing service providers can be considered broadband service. To account for the value of mobility, the Agency will distinguish between fixed and mobile broadband service. The Agency's intent is to set these levels low enough to ensure that loans are not made in areas with sufficient competition to offer acceptable services to rural households. The term "broadband lending speed" is used in the context of determining what standards an applicant's proposed services must attain in order to qualify for a broadband loan. The 2008 Farm Bill does not allow for requirements that preclude the use of evolving technologies and therefore the Agency has established the means for setting different requirements for fixed and mobile broadband service. The Agency also believes that these services are sufficiently different to justify a consideration of having different requirements. In the case of mobile service, consumers appear to be willing to accept slower speeds in exchange for mobility. The Agency's intent is to set these lending speeds at an aggressive level to ensure that public funds are used to provide the highest-quality service and that the investments will remain competitive in the long term to allow repayment of the loan. The Agency has carefully adhered to the statutory requirement to remain technologically neutral in its definition of the minimum rate of data transmission that will qualify as broadband service and the minimum bandwidth requirement that will establish the broadband lending speed.

The Agency has not established either the minimum rate of data transmission that will qualify as broadband service or the minimum bandwidth requirement that will establish the broadband lending speed in the regulation. The appropriate level for these standards will change over time as technology evolves. To account for this reality, the Agency will publish these speeds in the **Federal Register**. The Agency's intent is to leave the standards in place over a multi-year period to allow potential applicants to plan and develop their proposals. However, the standards will be altered from time to time, as changes in technology warrant. For the purposes of this interim rule, the broadband service minimum rate of data transmission will be three megabits per second (download plus upload speeds) for both fixed and mobile broadband service and the broadband lending speed will be a minimum bandwidth of 5 megabits per second for fixed and 3 megabits per second for mobile broadband service to the household (download plus upload speeds).

The requirement that applicants demonstrate a 10 percent equity position is stated in § 1738.101(b)(4). The Agency received numerous comments with regard to the equity requirement after publication of the proposed rule. This requirement is expanded upon in § 1738.207 and an explanation of the Agency's policy choices is provided within that portion of the preamble.

Finally, paragraph § 1738.101(b)(5) concerning additional security was not previously included in the applicant eligibility section. Its inclusion here is not meant to change the eligibility requirements laid out in the proposed rule. Instead, it is listed here with a reference to its fuller discussion later in the regulation to ensure that potential applicants are made aware, as they are considering whether they will qualify for a broadband loan, that additional security requirements may be imposed.

Section 1738.102 Eligible Service Area

Section 1738.102(a)(1) clarifies that to be eligible for a broadband loan, a funded service area must be completely contained within a rural area. The specifics of what constitutes a rural area are provided in the definitions section.

The 2008 Farm Bill requires that at least 25 percent of the households in the proposed service area be underserved in order for the area to qualify as an eligible service area. As presented in the definitions, an underserved household is one that is not offered broadband service, or that is offered broadband service by only one incumbent service provider. This requirement is addressed in § 1738.102(a)(2).

Under the proposed rule, applicants would have been precluded from obtaining funding for projects in service areas with four or more existing broadband service providers. The 2008 Farm Bill, however, specified that a service area may be eligible for funding only if no part of the area is served by three or more incumbent service providers. This requirement is addressed in § 1738.102(a)(3).

The proposed rule would have prevented the Agency from making broadband loans in any rural community in which a current borrower was already providing broadband service. In the present rule, the Agency has kept this prohibition, but added further protection to grantees to address the Broadband Initiatives Program awards recently made. Nonetheless, the Agency encourages comments on this issue.

In some cases, applicants may propose areas within their application that are ineligible. Such areas must be included in the review of the financial feasibility of the project, and shown how they are funded by outside sources. For example, an applicant may have requested a loan to provide broadband service in three communities located in eligible areas, but based the feasibility analysis on a five-community strategy with two communities overlapping a current borrower's service territory. In such a situation, the Agency would not make a loan in the two communities that support the current borrower's operations but could make a loan in the three communities that constitute the eligible service area. This is reflected in § 1738.102(a)(4).

Finally, § 1738.102(b) specifies that, while multiple service areas may be included in a single loan application, non-contiguous areas are considered separate service areas and must be

treated separately for the purpose of determining area eligibility. This means that non-contiguous service areas must also be treated separately for the purposes of the market survey and competitive analysis requirements.

Section 1738.103 Eligible Service Area Exceptions for Broadband Facility Upgrades

The Agency firmly believes rural communities should have affordable access to broadband services of the highest quality. The 2008 Farm Bill supports this position by providing for an exemption from certain area eligibility requirements if an applicant proposes to upgrade its existing broadband service facilities. This is reflected in the interim rule at § 1738.103(a), which exempts current borrowers wishing to upgrade their facilities from the requirements concerning number of underserved households as set forth in § 1738.102 and if the current borrower is also an incumbent service provider, from the number of incumbent service providers stipulated in § 1738.102(a)(2) and (3). This exception will permit the Agency to consider funding borrower efforts to keep their facilities upgraded to current standards, even if competition increases and the percentage of households served increases. The Agency will offer similar consideration to incumbent service providers wishing to upgrade their facilities, even if they are not current borrowers, by exempting them from the requirement concerning the number of incumbent service providers stipulated in § 1738.102(a)(3).

For loans that do not require an exception from § 1738.102(a)(2) and (3) for upgrading, an applicant can treat service areas to be upgraded and new service areas as a single service area, as long as the areas are contiguous. In the case of an upgrade that requires an exception to qualify for funding, however, the interim rule at § 1738.103(c) requires that the geographic area already served by the applicant be treated as a separate service area from any expanded service areas to be added. In this situation, the interim rule specifies that the expansion area will be treated as a new service area even if it is contiguous to the area to receive the exception for upgrading. In such a situation, an applicant may provide the Agency with only one application, but the expansion area must meet all service area eligibility requirements and be treated separately for the purposes of the market survey, competitive analysis, and financial projection requirements. This requirement is necessary to prevent potential applicants from manipulating their expanded service areas to trigger the upgrade exceptions in ways that would circumvent the intent of the statute.

Section 1738.104 Preliminary Assessment of Service Area Eligibility

The 2008 Farm Bill includes a new provision for determining, prior to developing an application, whether a particular geographic area is potentially eligible for a loan. This process is expected to help prevent potential applicants from investing time and other resources in developing applications for ineligible areas, thereby reducing the paperwork burden associated with the program. To address this requirement, the interim rule specifies at § 1738.104(a) that the Agency will make available information about whether the proposed service area is located in a rural area, whether it overlaps with a current borrower's service area, and whether any part of the area overlaps with a service area specified in a pending application.

This preliminary assessment of area eligibility does not account for all factors associated with area eligibility. For example, it is not possible to make a preliminary assessment of whether the area is already served by three or more incumbent service providers. This information will not be known until after the application is submitted and the public notice period has expired. Moreover, the situation in a given service area may change between the preliminary assessment and submission of the application. Section 1738.104(b) highlights the fact that the preliminary assessment indicating that a proposed area may be eligible is not an assurance that the proposed service area will be eligible for a broadband loan at the time of application. The preliminary assessment will, however, provide a basic screening tool to help potential applicants make informed decisions about their choice to develop an application.

Initially, the Agency will provide this preliminary assessment information on a case-by-case basis, as requested by prospective applicants. However, the Agency also is developing an interactive mapping tool that is expected to allow applicants both greater independence and greater flexibility to make informed choices about service area selection and application development when it becomes available.

Subpart D—Direct Loan Terms

Section 1738.151 General

Section 1738.151(a) identifies the two types of direct loans that are available under the program: loans bearing a cost-of-money interest rate or bearing a fixed 4 percent rate. A combination of these two types of loans also may be offered. The details about these types of loans, such as interest rates, terms and conditions, and security, are discussed later in this subpart. Section 1738.151(b) specifies that the program's minimum and maximum loan amounts will be published in the **Federal Register**, along with the amount of funds available for each type of loan. New language has been added to the proposed rule, in light of an explicit limitation noted in the 2008 Farm Bill, on maximum loan amount. Specifically, § 1738.151(c) states that applicants providing telecommunications or broadband service to at least 20 percent of the households in the United States are limited to a loan amount that is no more than 15 percent of the funds available through the program for the fiscal year.

Section 1738.152 Interest Rates

Aside from minor edits for clarity, policies regarding cost-of-money interest rates set forth in § 1738.152(a) remain unchanged from polices stated in the proposed rule. With regard to direct 4 percent loans, the proposed rule would have made such loans available to rural communities with no more than 5,000 residents and served by no more than one service provider. Only two comments were filed relating to this issue, one of which suggested a standard that favored projects with the highest percentage of underserved communities, where feasibility was insufficient under cost of money rates. In light of this comment, the Agency reconsidered the potential usefulness of the 4- percent loans as a tool to help an applicant meet financial feasibility requirements. More specifically, the Agency envisions using 4 percent loans to assist applicants that project a times interest earned ratio (TIER) of greater than 1.00 but less than the required ratio of 1.25. Section 1738.152(b) specifies that the 4- percent loan can be used by the Agency to help meet such feasibility requirements. Before implementation of using 4 percent loans, the Agency requests public comments on the requirements of their use.

Section 1738.153 Loan Terms and Conditions

The material included in this section appeared in the proposed rule in a section entitled "payments on loans."

Paragraph 1738.153(a) of the interim rule includes information on repayment periods and Paragraph 1738.153(b) discusses loan payments. These sections have been edited for clarity, but no substantive changes have been made. Discussion of an extended maturity mentioned in the proposed rule has been moved to § 1738.155 (Special terms and conditions). Paragraph 1738.153(c) has been added to clarify the Agency's existing policy, specified in current loan documents, requiring applicants to obtain a fidelity bond as a condition of receiving the loan.

Section 1738.154 Loan Security

Paragraph 1738.154(a) and (b) states that all loans made by the Agency must be adequately secured and that the Agency must generally be given an exclusive first lien on all of the applicant's assets. Paragraph 1738.154(c) and (d) go on to require that property purchased with loan funds be owned by the applicant and to impose special requirements on facilities that are not self-contained operating systems. Finally, Paragraph 1738.154(e) articulates the Agency's existing policy that financial, investment, operational, reporting, and managerial controls may be specified in the loan documents. The 2008 Farm Bill imposed no new security requirements. The section has been edited for clarity, but no substantive changes have been made.

The 2008 Farm Bill did add a concept related to loan security, requiring the Agency to ensure that the type, amount, and method of security are commensurate with the risk involved. This requirement is addressed in § 1738.155(b).

Section 1738.155 Special Terms and Conditions

Section 1738.155(a) was added to the interim rule to give the Agency additional flexibility, as provided by the 2008 Farm Bill, to bring broadband access to underserved areas (that is, to areas with no service provider or with only one incumbent service provider). The section specifies that if it aids in achieving financial feasibility, the Agency may adjust terms and conditions such as extending the repayment period or lessening security requirements for underserved service areas. Section 1738.155(b) addresses the statutory requirement that the type, amount, and method of security be commensurate with the risk involved.

Section 1738.156 Other Federal Requirements

Applicants must agree in writing to comply with a range of Federal regulations. This section was added to the interim rule to make clear the various regulations and requirements contained in the loan documents with which applicants will be required to comply. It also clarifies that additional requirements may be imposed through the loan documents. It further specifies that applicants must comply with all relevant Federal, State, and local requirements.

Subpart E—Application Review and Underwriting

Section 1738.201 Application Submission

Section 1738.201(a) codifies current Agency policy that applications may be submitted to either the Agency's General Field Representative (GFR) or directly to the National Office. It further specifies that the date received, which determines processing order, will be established based on the date the application is received by the National Office.

Section 1738.201(b) states that the Agency may publish additional application submission requirements in the **Federal Register**, as well as indicating in that document the amount of funds that will be made available for each loan type.

Section 1738.202 Elements of a Complete Application

This section codifies current Agency policy concerning the key elements that must be included in an application. The section does not specify every application requirement. The details of the application process are provided in the Rural Broadband Access Loan and Loan Guarantee Program Application Guide (the Application Guide). This section is sufficiently detailed, however, to allow the reader to understand what information must be provided in the application so that the Agency can evaluate the financial and technical feasibility of the loan application.

Section 1738.203 Priority for Processing Loan Applications

The 2008 Farm Bill directs that the Agency establish priority processing for applicants proposing "to provide broadband service to the greatest proportion of households that * * * had no incumbent service provider." Although the 2008 Farm Bill uses the term "incumbent service provider," Congressional deliberations suggest that the intent of this provision was to provide priority processing to applicants proposing to serve the highest number of households without access to broadband service. The provision has been interpreted as such for the purposes of this regulation.

The Agency processes applications on a rolling basis. For applications not requesting section 306F consideration, § 1738.203(a) establishes three priority categories to implement the statute's priority requirements: (1) Applications in which no broadband service is available in any proposed service area; (2) applications that propose service areas in which at least 75 percent of the households have no access to broadband service (for applications with multiple service areas, the 75 percent calculation is based on all service areas combined); and (3) all other applications. Once applications have been prioritized according to these criteria, § 1738.203(b) provides that they will be processed on a first-in, first-out basis within each priority category.

Section 1738.203(c) specifies that the Agency will establish National and State reserves, as required by the 2008 Farm Bill. Because the method for establishing the reserves is detailed in the 2008 Farm Bill, the section references the statute rather than repeating the information.

Section 1738.204 Public Notice

In the proposed rule, the Agency proposed new legal notice requirements to help identify areas with no existing broadband service for priority consideration and to notify communities of the potential entrance of a new service provider. Doing so was expected to provide existing service providers with an opportunity to be classified as incumbent service providers and to establish their current service territory, service offerings, market share, and so on. The purpose of these changes was to increase transparency, reach a broader range of interested parties, and obtain more detailed information about incumbent service providers to determine if an applicant's proposed service area was eligible for a broadband loan.

The 2008 Farm Bill affirms the need for transparent public notice, requiring the Administrator to publish a notice of each application received. The interim rule addresses the statutory notice requirement through a public notice process. The interim rule, at § 1738.204(a), requires that the applicant provide all required information but places responsibility on the Agency to publish the notice. It is the Agency's intent to post the public notice on an Agency webpage, which will serve as a central, universal, and easily-accessible point of information. The Agency further intends to explore the possibility of developing tools that

will proactively notify existing service providers about applications that may potentially overlap with the geographic areas in which the existing provider offers service (for example, via a listserv or similar communication tool). The Agency would welcome public comment on approaches to information dissemination that would be most useful to the broadband community.

The 2008 Farm Bill requires that the public notice identify the applicant, the proposed service area, and the estimated number of households without terrestrial-based broadband service in the service area. The interim rule requires applicants to supply this information and to supply a map of the proposed service area identifying rural area boundaries and underserved areas. In addition, applicants are required to provide information about the number of underserved households in each service area and a description of the types of services that the applicant proposes to offer in each service area. These pieces of information are essential to allow incumbent service providers to respond appropriately to the published notice and to allow the Agency to determine whether the proposed service areas are eligible for funding.

The interim rule establishes a standard 30-calendar day notice period that begins after an application is filed and the public notice is posted on an Agency Web site. It requires interested parties to provide the Agency with specified information within the 30 day window in order for the Agency to determine whether they meet the criteria for being an incumbent service provider. Section 1738.204(c) specifies that service providers that do not respond to the public notice within the 30 day period will not be considered incumbent service providers for the purpose of determining the service area's eligibility. However, regardless of whether a service provider responds to the notice or not, all known service providers in the proposed service area will be considered in the competitive analysis performed by the Agency. Section 1738.204(d) clarifies that if a portion of the applicant's service area which is proposed to be funded is ineligible, the Agency will provide the information necessary to allow the applicant to adjust the service areas presented in the application.

Twenty-three commenters responded to the notice requirements in the proposed rule. Overall, the comments were supportive of the Agency's efforts to be more transparent about proposed applications. However, respondents were divided as to how much information should be divulged, with some worrying that too much proprietary information would be made accessible to the public. The Agency has considered comments on the proposed rule in developing those portions of the interim rule where the 2008 Farm Bill offers flexibility. The public notice requirements in the interim rule seek to balance and address many concerns about the notice process. Section 1738.204(e) clarifies that information will be treated as proprietary and confidential to the extent permitted under applicable law.

The Agency is aware that any new system will create uncertainties as the users learn where to find information and what information is required. The Agency is committed to developing tools and making appropriate adjustments to ensure that existing service providers have a fair opportunity to respond to the public notice and to enhancing transparency while protecting proprietary information.

Section 1738.205 Notification of Completeness

This section codifies current Agency policy concerning how it reviews applications for completeness. Section 1738.205(a) specifies that applications must include all required documents and information and that the information must be of adequate quality to allow further analysis. Section 1738.205(b) clarifies that the Agency may take one of three courses of action after reviewing an application for completeness: (1) Notify the applicant that the application is complete and proceed with processing; (2) notify the applicant that the application is of adequate quality but incomplete and specify a time frame within which to make required improvements; or (3) notify the applicant that the application is not of adequate quality and reject the application. By specifying these three courses of action, the Agency is seeking to be transparent and consistent in how it reviews and responds to applications.

The distinction between a notification of incompleteness and a notification of rejection has important implications. When an applicant is notified that an application is incomplete, the application holds its place in the processing queue and the service areas that the applicant intends to serve are not available to other potential applicants. If an application is rejected, the applicant loses its place in the processing queue and those service areas that had been proposed in the rejected application are once again available as service areas for other potential applicants. By establishing a mechanism for rejecting applications, the Agency is seeking to ensure that applications that do not meet a minimum standard, or which are not making adequate progress toward completion, are removed from the processing queue. This will help avoid blocking more feasible applications in the same service area from being considered.

Section 1738.206 Evaluation for Feasibility

This section codifies current Agency policy concerning how it evaluates applications. It explains how the Agency evaluates applications in an effort to help potential borrowers provide higher-quality applications. By clearly establishing the concepts of financial and technical feasibility in § 1738.206(a) and (b), the Agency is seeking to be transparent about the criteria it will use to evaluate applications. The section also clarifies the inter-related nature of the application components, indicating that weakness in one component of the application can impact an overall determination of feasibility. The Agency believes applicants that understand these interconnections will supply higher-quality applications, enhancing the likelihood of approval.

Section 1738.207 Equity Requirement

The equity requirement for the program had stood at 20 percent of the value of the requested loan since the program's inception in 2002. Based on the statutory language of the 2008 Farm Bill, the Agency is proposing a minimum equity requirement of 10 percent. To offset this reduction in equity and to ensure that only sustainable operations are funded, the Agency has added review procedures that can increase the amount of equity required based on the proposed business plan. Commenters were generally supportive of this change, with 11 out of 16 supporting the reduction to 10 percent and many of the remainder supporting even deeper reductions (under certain circumstances).

In the changes made in the 2008 Farm Bill, the Congress also supported the concept of a reduction in the equity requirement by specifying that the amount of equity required must not exceed 10 percent of the amount of the loan requested. While the statute would permit the Agency to require less than 10 percent equity, the Agency is cognizant of the importance of balancing applicant preference for low equity requirements with the Agency's

responsibility, as a steward of taxpayer dollars, to require sufficient equity to ensure the viability of the project. Therefore, § 1738.207(a) requires a minimum equity position of 10 percent of the requested loan amount.

The Agency understands that achieving this equity position when it is not yet known whether the loan will be approved may be difficult. Therefore, as in the proposed rule, § 1738.207(b) and (c) account for situations in which an applicant may not have the equity available at the time the application is submitted. The interim rule specifies that an investor's proposal to cover the equity shortfall or, for State and local governments, the authority to issue a general obligation bond, can be sufficient to meet the equity requirement for the purposes of loan approval. The interim rule requires that the 10 percent equity position must be attained prior to execution of the loan documents.

Section 1738.208 Additional Cash Requirements

The 2008 Farm Bill permits the Agency to make additional security requirements beyond the 10 percent minimum equity requirement when necessary to ensure financial feasibility. This section lays out Agency policy for when it will require an applicant to contribute additional cash to the project. Section 1738.208(a) requires that the feasibility analysis show a positive cash balance at the end of each year during the five-year forecast period. Applicants unable to meet this standard will be required to obtain additional infusions of cash necessary to maintain an appropriate cash balance throughout the five-year forecast period.

As the Agency considered how to count projected revenues, a key issue was the difficulty of substantiating projected revenues for an entity without a credible, recent history of generating positive cash flow. To address this concern, the interim rule specifies at § 1738.208(a)(2) that in addition to the initial projections, start-up and existing companies that do not have a positive cash flow for the two years prior to submitting an application must submit adjusted financial projections based on 50 percent of projected revenues. These adjusted projections will be used to determine the amount of additional cash that will be required. Although the Agency has stated that 50 percent of projected revenues will be considered for start-up operations, comments addressing this requirement are encouraged. For those existing operations that have demonstrated a positive cash flow, 100 percent of projected revenues can be used in the determination of additional cash required.

The interim rule at § 1738.208(b) also permits applicants to use an unconditional, irrevocable letter of credit (LOC) to satisfy any additional cash requirement. Issues of how long the LOC must remain in place and what specific standards it must meet are specified in this section. The section concludes in § 1738.208(c) with a discussion of the timing for providing needed cash infusions.

Section 1738.209 Market Survey

The proposed rule set out to reduce the burden on applicants by eliminating the requirement for a market survey in areas where the applicant projects a minimal penetration rate. This proposal generated considerable support from commenters: Out of the 13 comments filed, eight were generally supportive of the overall initiative, while another three pushed for more leniency. The 2008 Farm Bill settled the question of how lenient to be by setting the penetration rate under which applicants were exempted from conducting a market survey at 20 percent.

In an effort to improve the quality of the market surveys received, the interim rule articulates the Agency's polices concerning what is required from a market survey. Specifically, § 1738.209(a) requires a market survey for each service area that meets the proposed penetration threshold of 20 percent, while § 1738.209(b) exempts those that will not achieve this penetration rate. In order for the project to be considered feasible, the market survey must demonstrate the need for the broadband service and support the financial projections. Section 1738.209(c) specifies that the market study must not be more than six months old when the application is submitted and emphasizes that the market survey must support the financial projections. It goes on to specify that the Agency may require an updated market survey if the demographic characteristics in the proposed service area have changed significantly.

The section further specifies at § 1738.209(d) that the Administrator may modify the market survey requirements for loans in underserved service areas.

Section 1738.210 Competitive Analysis

This section codifies current Agency policy concerning its requirements for a competitive analysis. The competitive analysis is a critical component of the Agency's financial feasibility analysis. The competitive analysis helps substantiate whether the applicant's projected penetration rates are realistic given existing competition in the area. The interim rule provides greater detail about this requirement than the proposed rule provided in an effort to help applicants submit higher-quality applications.

Section 1738.211 Financial Information

This section codifies current Agency policy concerning the financial information it requires from applicants prior to making a determination of financial feasibility. The interim rule at § 1738.211(a) provides detail about acceptable documentation to demonstrate the organization's financial capacity, while § 1738.211(b) indicates the information required to demonstrate the proposed project's financial viability. The rule specifies the types of historical financial information required and the form in which this information must be provided. It also provides guidance for applicants that cannot provide audited financial statements or are start-up organizations. The interim rule includes requirements specifying when financial information from parent or affiliated operations is required so the Agency can fully evaluate the financial wherewithal of these operations when they are important to the success of the project.

In addition to the requirements presented in the interim rule, the Application Guide provides detailed procedural guidance to ensure that financial information submitted by the applicant matches closely with the Agency's internal financial evaluation tools. This is expected to provide applicants with a clearer understanding of how the Agency evaluates financial feasibility.

The interim rule maintains the minimum TIER of 1.25 but removes the maximum TIER of 2.0 as a regulatory ceiling. Section 1738.211(c) indicates that specific TIER requirements will be specified in the loan documents.

Section 1738.212 Network Design

This section codifies current Agency policy concerning the network design components that must be clearly described in an application to allow the Agency to make a determination of technical feasibility. In § 1738.212(a), the interim rule specifies essential categories of information that must be provided. These include information about service level objectives and monitoring ongoing service to ensure that applicants are considering how they will provide high quality service to customers after the system is built.

Section 1738.212(b) goes on to describe the required qualifications for the staff responsible for the network design. Finally, § 1738.212(c) notes that these requirements may be modified in underserved service areas. Procedural details are specified in the Application Guide. The Agency anticipates that by providing greater detail about these requirements, the interim rule will help ensure higher-quality applications.

As described in § 1738.101 of this preamble, in its deliberations concerning network design, the Agency wrestled with the implications of establishing a single, aggressive, broadband lending speed. One of the implications not discussed above is that for some areas, it will be economically infeasible to provide service that meets the required broadband lending speed. In such hard-to-serve areas, even relatively slow broadband access, far below the broadband lending speed, would be an improvement over the current lack of service. Currently, no special provision is made for these hard-to-serve areas. The Agency is particularly interested in receiving public comments concerning how a policy could be formulated in a way that would be feasible to implement fairly, that would maintain an aggressive broadband lending speed standard in most areas, but would permit some degree of service to be extended to hard-to-serve areas.

Section 1738.213 Loan Determination

This section codifies current Agency policies concerning loan determination. These include ensuring that all statutory and regulatory requirements are met and demonstrating that the TIER requirement can be met. The section goes on to explain that applications that meet these requirements undergo a consistent loan review process and that all applicants receive a written response to their loan requests. By clarifying these steps, the interim rule provides for greater transparency concerning the Agency's loan determination process and will help ensure consistency in how the Agency handles loan decisions.

Subpart F—Closing, Servicing, and Reporting

This subpart was added to the interim rule to provide borrowers with additional clarity and guidance about Agency policies on closing and post-closing activities.

Section 1738.251 Loan Offer and Loan Closing

This section provides general information about the steps and typical timing involved in the process of moving from the loan offer to loan closing. The section also articulates the importance for the applicant of meeting all conditions set down by the Agency by the required date in order to avoid termination of the loan offer. Finally, it specifies the conditions under which the Agency may approve a request for an extension if the applicant has difficulty meeting the conditions required for loan closing. These policies codify the Agency's current approach to loan offer and loan closing and do not represent a change in Agency policy.

Section 1738.252 Construction

Agency loan documents specify that construction must comply with various regulations and bulletins. Section 1738.252(a) lists key documents with which construction must comply, in order to ensure that potential applicants are aware of the requirements prior to submitting an application.

Section 1738.252(b) discusses the circumstances under which applicants may enter into interim financing agreements and receive reimbursement from the loan funds if a loan is made.

Section 1738.252(c) requires borrowers to begin construction within six months from the day they are notified that loan funds are available. The Agency occasionally approves a loan for a borrower that fails to follow through on the approved project within a reasonable time. Although the loan documents address this situation, the addition of this section to the interim rule makes explicit the Agency's policy that the loan may be canceled if the borrower fails to perform.

Section 1738.252(d) reminds the borrower in the context of the construction process that the build-out must be complete within three years from the day they are notified that loan funds are available. This requirement also is listed in § 1738.101(b)(2) in the discussion of eligible applicants.

Section 1738.253 Servicing

The borrower's responsibilities after loan closing are spelled out in the loan documents. Sections 1738.253(a) and (b) have been added to the interim rule to codify the Agency's essential policies that the borrower must make payments as required in the note and must comply with all terms, conditions, and covenants as stated therein. Section 1738.253(c) specifies that in the event of default on any required payment or other term or condition, the Agency may exercise the default remedies provided in the loan documents. It further stipulates that if the Agency chooses not to exercise its default remedies, it does not waive its right to do so in the future.

Section 1738.254 Accounting, Reporting, and Monitoring Requirements

This section summarizes the borrower's obligations with regard to accounting, reporting, and monitoring.

Section 1738.254(a) articulates the Agency's current policy that borrowers must adopt a system of accounts for maintaining financial records that is acceptable to the Agency.

Section 1738.254(b) lays out the audit requirements for borrowers. Requirements for the first year of the loan may be different than subsequent years, and the differences are specified here.

Finally, § 1738.254(e) requires borrowers to comply with all reasonable Agency requests to support ongoing monitoring efforts. An Agency initiative over the coming years will involve strengthening its ongoing monitoring and servicing efforts. Borrower compliance and cooperation will be essential to the success of this effort. This does not represent a change in the Agency's policy but articulates it in the regulation rather than relying upon loan documents for this authority.

Subpart G—Loan Guarantee

The Agency received few comments on the loan guarantee sections of the proposed rule. Section 1738.301 of the interim rule clarifies that, with a few exceptions, the eligibility requirements, loan terms, and application review and underwriting policies are essentially the same for loan guarantees as for direct loans. The balance of subpart G remains substantively the same as in the proposed rule. Although loan guarantees have not been widely used in the past, the Agency encourages interested parties to provide feedback on the loan guarantee portion of the regulation.

List of Subjects in 7 CFR Part 1738

Broadband, Loan programs-communications, Rural areas, Telephone, Telecommunications.

Accordingly, chapter XVII, title 7, Code of Federal Regulations is amended by revising part 1738 to read as follows:

PART 1738–RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

Subpart A—General

Sec.

1738.1 Overview.
1738.2 Definitions.
1738.3 Substantially underserved trust areas.
1738.4–1738.50 [Reserved]

Subpart B—Eligible and Ineligible Loan Purposes

1738.51 Eligible loan purposes.
1738.52 Ineligible loan purposes.
1738.53–1738.100 [Reserved]

Subpart C—Eligibility Requirements

1738.101 Eligible applicants.
1738.102 Eligible service area.
1738.103 Eligible service area exceptions for broadband facility upgrades.
1738.104 Preliminary assessment of service area eligibility.
1738.105–1738.150 [Reserved]

Subpart D—Direct Loan Terms

1738.151 General.
1738.152 Interest rates.
1738.153 Loan terms and conditions.
1738.154 Loan security.
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1738.156 Other Federal requirements.
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Subpart E—Application Review and Underwriting

1738.201 Application submission.
1738.202 Elements of a complete application.
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1738.206 Evaluation for feasibility.
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1738.208 Additional cash requirements.
1738.209 Market survey.
1738.210 Competitive analysis.
1738.211 Financial information.
1738.212 Network design.
1738.213 Loan determination.
1738.214–1738.250 [Reserved]

Subpart F—Closing, Servicing, and Reporting

1738.251 Loan offer and loan closing.
1738.252 Construction.
1738.253 Servicing.
1738.254 Accounting, reporting, and monitoring requirements.
1738.255–1738.300 [Reserved]

Subpart G—Loan Guarantee

1738.301 General.
1738.302 Eligible guaranteed lenders.
1738.303 Requirements for the loan guarantee.
1738.304 Terms for guarantee.
1738.305 Obligations of guaranteed lender.
1738.306 Agency rights and remedies.
1738.307 Additional policies.
1738.308 Full faith and credit of the United States.
1738.309–1738.349 [Reserved]
1738.350 OMB control number.

Authority: Pub. L. 107–171, 7 U.S.C. 901 *et seq.*

Subpart A—General

§ 1738.1 Overview.

(a) The Rural Broadband Access Loan and Loan Guarantee Program furnishes loans and loan guarantees to provide funds for the costs of construction, improvement, or acquisition of facilities and equipment needed to provide service at the broadband lending speed in eligible rural areas. This part sets forth the general policies, eligibility requirements, types and terms of loans and loan guarantees, and program requirements under Public Law 107–171 and 7 U.S.C. 901 *et seq.*

(b) Additional information and application materials regarding the Rural Broadband Access Loan and Loan Guarantee Program can be found on the Rural Development Web site.

§ 1738.2 Definitions.

(a) The following definitions apply to part 1738:

Acquisition means the purchase of assets by acquiring facilities, equipment, operations, licenses, or majority stock interest of one or more organizations. Stock acquisitions must be arms-length transactions.

Administrator means the Administrator of the Rural Utilities Service (RUS), or the Administrator's designee.

Advance means the transfer of loan funds from the Agency to the borrower.

Affiliate or *affiliated company* of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities.* For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, or holding trusts (other than money exchanged) for property or services.

Agency means the Rural Utilities Service, which administers the United States Department of Agriculture's (USDA's) Rural Development Utilities Programs, including the Rural Broadband Access Loan and Loan Guarantee Program.

Applicant means an entity requesting approval of a loan or loan guarantee under this part.

Arm's-length transaction means a transaction between two related or affiliated parties that is conducted as if they were unrelated, so that there is no question of conflict of interest, or a transaction between two otherwise unrelated or unaffiliated parties.

Borrower means any organization that has an outstanding broadband or telecommunications loan made or guaranteed by the Agency.

Broadband borrower means any organization that has an outstanding broadband loan made or guaranteed by the Agency.

Broadband grant means a Community Connect or Broadband Initiatives Program grant approved by the Agency.

Broadband lending speed means the minimum bandwidth requirement, as published by the Agency in its latest notice in the **Federal Register** that an applicant must propose to deliver to every customer in the proposed funded service area in order for the Agency to approve a broadband loan and may be different for fixed and mobile broadband service. Broadband lending speed may be different from the minimum rate of data transmission required to determine the availability of broadband service when qualifying a service area. If a new broadband lending speed is published in the **Federal Register** while an application is pending, the pending application may be returned unless the proposed broadband system can provide service at the new broadband lending speed. Returned applications will lose their place in the processing queue.

Broadband loan means any loan approved under Title VI of the Rural Electrification Act of 1936 (RE Act).

Broadband service means any technology identified by the Administrator as having the capacity to provide transmission facilities that enable the subscriber to the service to originate and receive high-quality voice, data, graphics, and video. The Agency will publish the minimum rate of data transmission that will qualify as broadband service in a notice in the **Federal Register** and this rate may be different for fixed and mobile broadband service. The minimum rate of data transmission that defines broadband service may be different than the broadband lending speed. If a new minimum rate of data transmission is published in the **Federal Register** while an application is pending, broadband service for the purpose of reviewing the application will be defined by the minimum rate of data transmission that

was required at the time the application was received by the Agency.

Build-out means the construction, improvement, or acquisition of facilities and equipment.

Competitive analysis means a study that identifies service providers and products in the service area that will compete with the applicant's proposed project.

Composite economic life means the weighted (by dollar amount of each class of facility in the loan) average economic life as determined by the Agency of all classes of facilities financed by the loan.

Cost share means equity, as defined by generally accepted accounting principles (GAAP).

Customer premises equipment (CPE), in the context of network services, means any network-related equipment (*e.g.* routers, switches, modems, etc.) used by a customer to connect to a service provider's network.

Derivative means any right, interest, instrument or security issued or traded on the credit of the guaranteed loan or any guaranteed loan portion, including but not limited to any participation share of, or undivided ownership or other equity interest in, the guaranteed loan or any guaranteed loan portion; any note, bond or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or security interest in, the guaranteed loan or any guaranteed loan portion; or any such interest in such an interest or any such instrument secured by such an instrument.

Economic life means the estimated useful service life of an asset financed by the loan, as determined by the Agency.

Equity means total assets minus total liabilities, as determined by GAAP and as classified according to the Agency's system of accounts and as used in this Part for purposes of section 306F of the RE Act includes the requirements of credit support and cost share in Title VI of the RE Act.

Feasibility study means the evaluation of the pro forma financial analysis prepared by the Agency, based on the financial projections supplied by the applicant and as found acceptable by the Agency, to determine the financial feasibility of a loan request. Financial feasibility will be based on the entire operation of the applicant and not limited to the funded project.

Financial feasibility means the applicant's ability to generate sufficient revenues to cover its expenses, sufficient cash flow to service its debts and obligations as they come due, and meet the minimum Times Interest Earned Ratio (TIER) requirement of 1.25 (see § 1738.211(b)(2)(ii)) by the end of the forecast period, as evaluated by the Agency.

Fiscal year refers to the applicant or borrower's fiscal year, unless otherwise indicated.

Forecast period means the time period used in the feasibility study to determine if an application is financially feasible. Financial feasibility of a loan application is based on five-year projections.

Funded service area means the geographic area within which an applicant proposes to offer service at the broadband lending speed using loan funds. (See also "service area.")

GAAP means generally accepted accounting principles.

Guaranteed-amount debt derivative means any note, bond, or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or security interest in, the guaranteed loan note or any guaranteed loan portion note or any derivative, as the case may be, which has an exclusive or preferred claim to the guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed-amount equivalent, as the case may be.

Guaranteed-amount equity derivative means any participation share of, or undivided ownership or other equity interest in, the guaranteed loan or any guaranteed loan portion or any derivative, as the case may be, which has an exclusive or preferred claim to the guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed-amount equivalent, as the case may be.

Guaranteed-amount equivalent means, with respect to any derivative which is equal in principal amount to the guaranteed loan or any guaranteed loan portion, that amount of payment on account of such derivative which is equal to the guaranteed loan amount or the respective guaranteed loan portion amount, as the case may be; or with respect to any derivative which in the aggregate are equal in principal amount to the guaranteed loan or any guaranteed loan portion, that amount of payment on account of such derivatives which is equal to the guaranteed loan amount or the respective guaranteed loan portion amount, as the case may be.

Guaranteed loan amount means the amount of the loan which is guaranteed by the Agency.

Guaranteed loan note means, collectively, the note or notes executed and delivered by the borrower to evidence the guaranteed loan.

Guaranteed loan portion means any portion of the guaranteed loan.

Guaranteed loan portion amount means that amount of payment on account of any guaranteed loan portion which is guaranteed under the terms of the guarantee.

Guaranteed loan portion note means any note executed and delivered by the borrower to evidence a guaranteed loan portion.

Grantee means any organization that has an outstanding broadband grant made by the Agency.

Incumbent service provider (i) Means a service provider that:

(A) Offers terrestrial broadband service in the proposed funded service area;

(B) Has not less than five percent of the households in an applicant's proposed funded service area subscribing to their broadband service at the time of application submission; and

(C) Provides this information to the Agency through a timely response to the public notice described in § 1738.204.

(ii) Resellers are not considered incumbent service providers. If an applicant proposes an acquisition, the applicant will be considered a service provider for that area.

Indefeasible right to use agreement (IRU) means the effective long-term lease of the capacity, or a portion thereof, of a cable, specified in terms of a certain number of channels of a given bandwidth.

Interim financing means funds used for eligible loan purposes after the applicant is notified by the Agency that the application is complete. Such funds may be eligible for reimbursement from loan funds if a loan is made.

Loan means any loan made or guaranteed under this part by the Agency, unless otherwise noted.

Loan contract means the loan agreement between the Agency and the borrower, including all amendments thereto.

Loan documents means the loan agreement, note(s), and security instrument between the borrower and the Agency and any associated documents pertaining to the broadband loan.

Loan guarantee means a loan made by another lender, some portion of which is guaranteed by the Agency.

Loan guarantee documents means the guarantee agreement between RUS and the lender, the loan and security agreement(s) between the guaranteed lender and the borrower, the loan note guarantee made by RUS, the guaranteed loan note, and other security documents.

Loan funds means funds provided pursuant to a broadband loan made or

guaranteed under this part by the Agency.

Market survey means the collection of information on the supply, demand, usage, and rates for proposed services to be offered by an applicant within each service area. It supports the applicant's financial projections.

Pre-loan expense means any expense associated with the preparation of a loan application. Pre-loan expenses may be reimbursed with loan funds, as approved by RUS.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

Reject means that the Agency returns the application to the applicant and discontinues processing of the loan application because the application failed to meet the requirements set forth herein. If an application is rejected, the loan application loses its place in the application processing queue.

Reseller means, in the context of network services, a company that purchases network services from network service providers in bulk and resells them to commercial businesses and residential households. Resellers are not considered incumbent service providers.

Rural area means any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within:

(i) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or

(ii) An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau.

Security documents means any mortgage, deed of trust, security agreement, financing statement, or other document which grants to the Agency or perfects a security interest, including any amendments and supplements thereto.

Service area means the geographic area within which a service provider offers telecommunications service.

Service level objectives (SLOs) means the characteristics of the service to be delivered to the customer, for example the speed with which new service will be established, service availability, and response time for reports of system failure at a residence.

Service provider means an entity providing telecommunications service.

Service territory means "service area."

Start-up means a new business venture without operations or service delivery available.

System of accounts means the Agency's system of accounts for maintaining financial records as described in RUS Bulletin 1770B–1.

Telecommunications means electronic transmission and reception of voice, data, video, and graphical information using wireline and wireless transmission media.

Telecommunications loan means any telecommunication loan made or guaranteed under Title II, III, or IV of the RE Act.

TIER means times interest earned ratio. TIER is the ratio of an applicant's net income (after taxes) plus (adding back) interest expense, all divided by interest expense (existing and that required in the proposed loan), and with all financial terms defined by GAAP.

Underserved household or Underserved area means a household or an area that is not offered broadband service, or that is offered broadband service by only one incumbent service provider.

Unguaranteed amount equivalent means all amounts of payment on account of any derivative other than the respective guaranteed-amount equivalent.

Unguaranteed loan amount means all amounts of payment on account of the guaranteed loan other than the guaranteed amount.

Unguaranteed loan portion amount means all amounts of payment on account of any guaranteed loan portion other than the respective guaranteed loan portion amount.

(b) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under GAAP and shall be recorded using the Agency's system of accounts.

§ 1738.3 Substantially underserved trust areas.

(a) If the Administrator determines that a community in "trust land" (as defined in section 3765 of title 38, United States Code) has a high need for the benefits of the Broadband Loan Program, he/she may designate the community as a "substantially underserved trust area" (as defined in section 306F of the RE Act).

(b) In order to improve the availability of the Broadband Loan Program in communities in substantially underserved trust areas, the Administrator retains the discretion to

(1) Make available to qualified utilities or applicants, financing with an interest rate as low as 2 percent, and with extended repayment terms;

(2) Waive nonduplication restrictions, matching fund and equity requirements, or credit support requirements; and

(3) Give the highest funding priority to designated projects in substantially underserved trust areas.

(c) The Administrator will only make loans and loan guarantees that RUS finds are financially feasible and that provide eligible program benefits to substantially underserved trust areas.

(d) Applicants should notify the National Office before preparing their applications that they are planning to seek waivers or adjustments based on this section (see § 1738.201).

§§ 1738.4–1738.50 [Reserved]

Subpart B—Eligible and Ineligible Loan Purposes

§ 1738.51 Eligible loan purposes.

Loan funds may be used to pay for the following expenses:

(a) To fund the construction, improvement, or acquisition of all facilities required to provide service at the broadband lending speed to rural areas, including facilities required for providing other services over the same facilities.

(b) To fund the cost of leasing facilities required to provide service at the broadband lending speed if such lease qualifies as a capital lease under GAAP. Notwithstanding, loan funds can only be used to fund the cost of the capital lease for no more than the first three years of the loan amortization period.

(c) To fund an acquisition, provided that:

(1) The acquisition is necessary for furnishing or improving service at the broadband lending speed;

(2) The acquired service area, if any, meets the eligibility requirements set forth in § 1738.102;

(3) The acquisition cost does not exceed 50 percent of the broadband loan amount; and

(4) For the acquisition of another entity, the purchase provides the applicant with a controlling majority interest in the entity acquired.

(d) To refinance an outstanding telecommunications loan made under the RE Act if refinancing the loan supports the construction, improvement, or acquisition of facilities and equipment for the provision of service at the broadband lending speed in rural areas provided that:

(1) No more than 40 percent of the broadband loan amount is used to refinance the outstanding telecommunications loan;

(2) The applicant is current with its payments on the telecommunication loan(s) to be refinanced; and

(3) The amortization period for that portion of the broadband loan that will be needed for refinancing will not exceed the remaining amortization period for the telecommunications loan(s) to be refinanced. If multiple notes are being refinanced, an average remaining amortization period will be calculated based on the weighted dollar average of the notes being refinanced.

(e) To fund pre-loan expenses in an amount not to exceed five percent of the broadband loan excluding amounts requested to refinance outstanding telecommunication loans. Pre-loan expenses may be reimbursed only if they are incurred prior to the date on which notification of a complete application is issued (see § 1738.205).

§ 1738.52 Ineligible loan purposes.

Loan funds must not be used for any of the following purposes:

(a) To fund operating expenses of the applicant;

(b) To fund costs incurred prior to the date on which notification of a complete application is issued (see § 1738.205), with the exception of eligible pre-loan expenses (see 1738.51(e)).

(c) To fund the acquisition of the stock of an affiliate.

(d) To fund the purchase or acquisition of any facilities or equipment of an affiliate, unless approved by the Agency in writing. The Agency may approve such a purchase or acquisition if the applicant demonstrates that the purchase or acquisition will involve an arms-length transaction and that the cost is advantageous for the applicant.

(e) To fund the purchase of CPE and the installation of associated inside wiring unless the CPE will be owned by the applicant throughout its economic life or

(1) The applicant pledges additional collateral that is not currently owned by the applicant, acceptable to the Agency. Such collateral must have a value at least equal to the purchase price of the CPE and cannot be purchased with loan funds; or

(2) The applicant establishes a revolving fund for the initial purchase of CPE to be sold, and as CPE is sold to the customer, at least the applicant's cost of such equipment is returned to the revolving fund and used to purchase additional CPE units.

(f) To fund the purchase or lease of any vehicle unless it is used primarily in construction or system improvements.

(g) To fund the cost of systems or facilities that have not been designed and constructed in accordance with the loan contract and other applicable requirements.

(h) To fund broadband facilities leased under the terms of an operating lease.

(i) To fund merger or consolidation of entities.

§§ 1738.53–1738.100 [Reserved]

Subpart C—Eligibility Requirements

§ 1738.101 Eligible applicants.

(a) To be eligible for a broadband loan, an applicant may be either a nonprofit or for-profit organization, and must take one of the following forms:

(1) Corporation;

(2) Limited liability company (LLC);

(3) Cooperative or mutual organization;

(4) Indian tribe or tribal organization as defined in 25 U.S.C. 450b; or

(5) State or local government, including any agency, subdivision, or instrumentality thereof.

(b) To be eligible for a broadband loan, the applicant must:

(1) Submit a loan application which meets the requirements set forth herein as well as any additional requirements published in the **Federal Register**;

(2) Agree to complete the build-out of the broadband system described in the loan application within three years from the day the applicant is notified that loan funds are available. The loan application must demonstrate that all proposed construction be completed within this three year period with the exception of CPE. CPE can be funded throughout the forecast period;

(3) Demonstrate an ability to furnish, improve, or extend broadband facilities to provide service at the broadband lending speed in rural areas;

(4) Demonstrate an equity position equal to at least 10 percent of the amount of the loan requested in the application (see § 1738.207); and

(5) Provide additional security if it is necessary to ensure financial feasibility (see § 1738.208) as determined by the Administrator.

§ 1738.102 Eligible service area.

(a) A service area may be eligible for a broadband loan if all of the following are true:

(1) The service area is completely contained within a rural area;

(2) At least 25 percent of the households in the service area are underserved households;

(3) No part of the service area has three or more incumbent service providers;

(4) No part of the funded service area overlaps with the service area of current RUS borrowers and grantees;

(5) No part of the funded service area is included in a pending application before RUS seeking funding to provide broadband service. If two or more applications are submitted for the same service area, a lending decision must be made on the application that was submitted to the Agency first before a lending decision can be made on the other application(s).

(b) Multiple service areas may be included in a single broadband loan application. Non-contiguous areas are considered separate service areas and must be treated separately for the purpose of determining service area eligibility. If non-contiguous areas within an application are determined to be ineligible, the Agency may pursuant to this regulation consider the remaining areas in the application. If an applicant fails to respond to agency requests for additional information or modifications to remove ineligible areas, the application may be returned and the application will lose its place in the processing queue.

§ 1738.103 Eligible service area exceptions for broadband facility upgrades.

(a) Broadband borrowers that apply to upgrade existing broadband facilities in its existing service area are exempt from the requirement concerning the number of underserved households in § 1738.102(b)(2).

(b) Incumbent service providers, including borrowers and grantees, which apply to upgrade existing broadband facilities in existing service territories are exempt from the requirement concerning the number of incumbent service providers in § 1738.102(b)(3) unless they are eligible for funding under Titles II and III of the RE Act. Eligibility requirements for entities that would be eligible under Titles II and III can be found in 7 CFR part 1735.

(c) An applicant which is a borrower, grantee or incumbent service provider may submit one application to upgrade existing broadband facilities in existing service areas, which qualify for the exemptions specified in paragraphs (a) and (b) of this section, and to expand services at the broadband lending speed into new service areas, provided the upgrade area and the expansion area are proposed as two separate service areas even if the upgrade and expansion areas are contiguous.

(d) The applicant will be asked to remove areas determined to be ineligible from their funding request. The application will then be evaluated on

the basis of what remains. The applicant may be requested to provide additional information to the agency relating to the ineligible areas. If the applicant fails to respond, the application will be returned and the application will lose its place in the processing queue.

§ 1738.104 Preliminary assessment of service area eligibility.

(a) The Agency will make information available to prospective applicants to allow a preliminary assessment of a proposed service area's eligibility. At a minimum, the prospective applicant will be able to determine:

(1) Whether the proposed service area is located in a rural area;

(2) Whether the proposed service area overlaps with any part of a borrower's or grantee's service area; and

(3) Whether the proposed service area overlaps with any part of a proposed service area in a pending application for a loan.

(b) A preliminary assessment of service area eligibility does not account for all eligibility factors, and the situation within a proposed service area may change between the preliminary assessment and application submission. A preliminary assessment indicating that a proposed service area may be eligible does not guarantee that the area will remain eligible at the time of application.

§§ 1738.105–1738.150 [Reserved]

Subpart D—Direct Loan Terms

§ 1738.151 General.

(a) Direct loans shall be in the form of a cost-of-money loan, a 4-percent loan, or a combination of the two.

(b) The amount of funds available for each type of loan, as well as maximum and minimum loan amounts, will be published in the **Federal Register**.

(c) An applicant that provides telecommunications or broadband service to at least 20 percent of the households in the United States is limited to a loan amount that is no more than 15 percent of the funds available to the Broadband Loan Program for the Federal fiscal year.

§ 1738.152 Interest rates.

(a) Direct cost-of-money loans shall bear interest at a rate equal to the cost of borrowing to the Department of Treasury for obligations of comparable maturity. The applicable interest rate will be set at the time of each advance.

(b) [Reserved].

§ 1738.153 Loan terms and conditions.

Terms and conditions of loans are set forth in a mortgage, note, and loan contract. Samples of the mortgage, note, and loan contract can be found on the Agency's Web site.

(a) Unless requested to be shorter by the applicant, broadband loans must be repaid with interest within a period that, rounded to the nearest whole year, is equal to the expected composite economic life of the assets to be financed, as determined by the Agency based upon acceptable depreciation rates.

(b) Loan advances are made at the request of the borrower. Principal payments for each advance are amortized over the remaining term of the loan and are due monthly. Principal payments will be deferred until one year after the date of the first advance of loan funds. Interest begins accruing when the advance is made and interest payments are due monthly, with no deferral period.

(c) Borrowers are required to carry fidelity bond coverage. Generally this amount will be 15 percent of the loan amount, not to exceed $5 million. The Agency may reduce the percentage required if it determines that the amount is not commensurate with the risk involved.

§ 1738.154 Loan security.

(a) The broadband loan must be secured by the assets purchased with the loan funds, as well as all other assets of the applicant and any other signer of the loan documents except as provided in § 1738.155.

(b) The Agency must be given an exclusive first lien, in form and substance satisfactory to the Agency, on all of the applicant's property and revenues and such additional security as the Agency may require. The Agency may share its first lien position with another lender on a *pari passu,* prorated basis if security arrangements are acceptable to the Agency.

(c) Unless otherwise designated by the Agency, all property purchased with loan funds must be owned by the applicant.

(d) In the case of loans that include financing of facilities that do not constitute self-contained operating systems, the applicant shall furnish assurance, satisfactory to the Agency, that continuous and efficient service at the broadband lending speed will be rendered.

(e) The Agency will require financial, investment, operational, reporting, and managerial controls in the loan documents.

§ 1738.155 Special terms and conditions.

(a) The Agency may, when it is in the best interest of the Agency and its mission, the affected community, and the applicant, aid in achieving financial feasibility in an underserved area by taking the following steps:

(1) Extend the loan term up to 35 years, and

(2) Modify its security requirements.

(b) The Agency may reduce the security requirements discussed in § 1738.154(a) to ensure that the security is commensurate with the risk involved.

§ 1738.156 Other Federal requirements.

(a) To receive a broadband loan, the applicant must certify or agree in writing to comply with a variety of Federal regulations including, but not limited to:

(1) The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (7 CFR part 15);

(2) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794 *et seq.*; 7 CFR part 15b);

(3) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*; 45 CFR Part 90);

(4) Executive Order 11375, amending Executive Order (E.O.) 11246, Relating to Equal Employment Opportunity (3 CFR, 1966–1970). See 7 CFR parts 15 and 15b and 45 CFR part 90, RUS Bulletin 1790–1 ("Nondiscrimination Among Beneficiaries of RUS Programs"), and RUS Bulletin 20–15:320–15 ("Equal Employment Opportunity in Construction Financed with RUS Loans");

(5) The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*);

(6) The Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101–19.6);

(7) The requirements of the National Environmental Policy Act of 1969 (NEPA), as amended;

(8) The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related Federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR part 1794;

(9) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, and with implementing Federal regulations in 49 CFR part 24 and 7 CFR part 21;

(10) The regulations implementing E.O. 12549, Debarment and Suspension, 7 CFR 3017.510, Participants' Responsibilities;

(11) The requirements regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements in 31 U.S.C. 1352;

(12) Certification regarding Flood Hazard Area Precautions;

(13) Certification regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions; and

(14) Certification that the borrower is not delinquent on any Federal debt and has been informed of the collection options the Federal Government may use to collect delinquent debt.

(b) Applicants must agree in writing to comply with all Federal, State and local laws, rules, regulations, ordinances, codes, and orders applicable to the project.

§§ 1738.157–1739.200 [Reserved]

Subpart E—Application Review and Underwriting

§ 1738.201 Application submission.

(a) Loan applications must be submitted directly to the Agency's National Office or to the General Field Representative (GFR) that is assigned to the area where the applicant's headquarters are located. A list of GFRs and the areas they are assigned can be found on the Agency's Web site. All applications must contain two hard copies and an electronic copy of the entire application. An application is considered received upon receipt of the hard and electronic copies by the National Office. The date and time of that receipt will establish the application's placement in the processing queue.

(b) The Agency may publish additional application submission requirements in the **Federal Register.**

§ 1738.202 Elements of a complete application.

An applicant must submit to the Agency a complete application in a format as required by the Agency in the Rural Broadband Access Loan and Loan Guarantee Program Application Guide (the Application Guide). To be considered complete, the application must contain at least the following items, each of which must be completed in a manner acceptable to the Agency:

(a) A completed RUS Form 532, including any additional items required by the form;

(b) Information required for the public notice to determine service area eligibility (see § 1738.204);

(c) Documentation demonstrating how the applicant will meet the equity requirement (see § 1738.207);

(d) A market survey, unless not required by § 1738.209(b);

(e) A competitive analysis (see § 1738.210);

(f) Required financial information (see § 1738.211);

(g) A network design (see § 1738.212);

(h) A legal opinion that addresses the applicant's ability to enter into a loan as requested in the loan application, to pledge security as required by the Agency, to describe all pending litigation matters, and such other requirements as are detailed in the Application Guide;

(i) All required licenses and regulatory approvals for the proposed operation or the status of obtaining these items; and

(j) Additional items that may be required by the Administrator through a notice in the **Federal Register.**

§ 1738.203 Priority for processing loan applications.

(a) Except as provided in Section 306F of the RE Act (SUTA) and section 1738.3 herein, in making or guaranteeing loans, the Agency shall give priority to applications in the following order:

(1) Applications in which no broadband service is available in any funded service area;

(2) Applications in which at least 75 percent of households in the funded service area have no incumbent service provider. For applications with multiple funded service areas, the 75 percent calculation is based on all funded service areas combined;

(3) Applications in which at least 50 percent of households in the funded service area have no incumbent service provider. For applications with multiple funded service areas, the 50 percent calculation is based on all funded service areas combined;

(4) Applications in which at least 25 percent of households in the funded service area have no incumbent service provider. For applications with multiple funded service areas, the 25 percent calculation is based on all funded service areas combined; and

(5) All other applications.

(b) Once applications have been prioritized according to the criteria listed in paragraph (a) of this section, the applications will be processed on a first-in, first-out basis within each priority category.

(c) The Agency shall establish the National and State reserve levels in accordance with Title VI of the RE Act. In instances when funds in a particular area are insufficient to cover a loan request, priority will be given to processing applications for which funding is available.

§ 1738.204 Public notice.

(a) The Agency will publish a public notice of each application. The application must provide a summary of the information required for such public notice including all of the following information:

(1) The identity of the applicant;

(2) A map of each service area showing the rural area boundaries and the underserved areas using the Agency's Mapping Tool;

(3) The estimated number of underserved households in each service area;

(4) The estimated number of households without terrestrial-based broadband service in each service area; and

(5) A description of all the types of services that the applicant proposes to offer in each service area.

(b) The Agency will publish the public notice on an Agency webpage after the application has been received in the Agency's National Office. The notice will remain on the webpage for a period of 30 calendar days. The notice will ask existing service providers to submit to the Agency, within this 30-day period, the following information:

(1) The number of residential and business customers within the applicant's service area that are currently offered broadband service by the existing service provider;

(2) The number of residential and business customers within the applicant's service area currently purchasing the existing service provider's broadband service, the rates of data transmission being offered, and the cost of each level of broadband service charged by the existing service provider;

(3) The number of residential and business customers within the applicant's service area receiving the existing service provider's non-broadband services and the associated rates for these other services; and

(4) A map showing where the existing service provider's services coincide with the applicant's service area using the Agency's Mapping Tool.

(5) Whether the existing service provider is an existing RUS borrower or grantee.

(c) The Agency will use the information submitted to determine if the existing service provider will be classified as an incumbent service provider. If an existing service provider does not submit a response within the timeframe specified in the public notice, it will not be considered an incumbent service provider. However, all existing service providers will be considered in the Agency's feasibility study and lending decision.

(d) The Agency will determine whether the service areas included in

the application are eligible for funding based on the information provided during the public notice period, whether all portions of the service area qualify as rural areas, and the number of incumbent service providers servicing any portion of the service area. If the applicant's funded service area is ineligible, the Agency will contact the applicant and require that those ineligible areas be removed from the funded service area. If the ineligible service areas are not removed from the funding request, the Agency will reject the application and remove it from the processing queue. The applicant will be notified, in writing, and the application will be returned with an explanation of the reasons for the rejection.

(e) The information submitted by an existing service provider will be treated as proprietary and confidential to the extent permitted under applicable law.

§ 1738.205 Notification of completeness.

If all funded service areas are eligible, the Agency will review the application for completeness. The completeness review will include an assessment of whether all required documents and information have been submitted and whether the information provided is of adequate quality to allow further analysis.

(a) If the application contains all required documents and information and is of adequate quality, the Agency will notify the applicant, in writing, that the application is complete. The notification of completeness will mark the date as of which costs incurred for the eligible purposes listed in § 1738.51(a) through (d) can be reimbursed with loan funds if the loan is ultimately made and proper procedures have been followed. A notification of completeness is not a commitment that the loan will be approved.

(b) If the application is of adequate quality but does not contain all required documents and information, the Agency will notify the applicant, in writing, that the application is incomplete. The notification of incompleteness will include a list of items that the applicant must address and will specify a date by which the applicant's additional information must be received.

(1) If the applicant fails to respond by the specified date, the application will be rejected.

(2) If the applicant responds by the specified date but does not satisfactorily address the issues identified, the Agency will assess the applicant's progress toward submission of a complete application. If the applicant has made progress acceptable to the Agency, a second notification of incompleteness will be provided. If the applicant's progress is not acceptable to the Agency, the application will be rejected.

(c) If the application is considered to be of inadequate quality, the Agency will notify the applicant, in writing, that the application has been rejected. The rejection letter will include an explanation of the reasons for the rejection and the application will be removed from the queue.

§ 1738.206 Evaluation for feasibility.

After an applicant is notified that the application is complete, the Agency will evaluate the application's financial and technical feasibility. The Agency will only make a broadband loan if the applicant's financial operations, taking into account the impact of the facilities financed with the proceeds of the loan and the associated debt, are financially and technically feasible, as determined by the Agency.

(a) The Agency will determine financial feasibility by evaluating the applicant's equity, market survey (if required), competitive analysis, financial information, and other relevant information in the application.

(b) The Agency will determine technical feasibility by evaluating the applicant's network design and other relevant information in the application.

§ 1738.207 Equity requirement.

(a) To be eligible for a loan, an applicant must demonstrate a minimum equity position equal to 10 percent of the requested loan amount at the time of application which must remain available at loan closing. In addition to this minimum equity requirement, please refer to section § 1738.208, Additional Cash Requirements which could cause the equity requirement to be higher than 10 percent.

(b) If the applicant does not have the required equity at the time the application is submitted, the applicant may satisfy the equity requirement at the time of application with an investor's unconditional legal commitment to cover the shortfall by providing additional equity. The additional equity must be transferred to the applicant prior to loan closing. If this option is elected, the applicant must provide evidence in the application that clearly identifies the investor's commitment to the applicant; the amount, terms, and conditions of the investment; and the investor's bank or financial statements that demonstrate its ability to fulfill its commitment. The terms and conditions of the investment must be acceptable to the Agency, which generally prohibits redemption of the investment until such time as stated requirements and financial thresholds are achieved by the applicant. The Agency will reject applications that do not provide evidence acceptable to the Agency regarding the investor's commitment.

(c) For State and local government applicants, the equity requirement can be satisfied with a general obligation bond, as long as the additional equity will be available to the applicant at closing. If the equity requirement is satisfied with a general obligation bond, the broadband loan cannot be subordinate to the bond. The applicant must submit an opinion from its legal counsel that the applicant has the authority to issue a general obligation bond in an amount sufficient to meet the minimum equity requirement. Revenue bonds supported by the operations to be funded cannot be used to satisfy the equity requirement.

§ 1738.208 Additional cash requirements.

(a) If the Agency's financial analysis indicates that the applicant's entire operation (existing operations and new operations combined) will show a negative cash balance at the end of any year during the five-year forecast period, the Agency will require the applicant to obtain additional cash infusions necessary to maintain an appropriate cash balance throughout the five-year forecast period. This cash infusion would be in conjunction with the required 10 percent minimum equity position.

(1) The Agency will require the applicant and its investors to:

(i) Infuse additional cash to cover projected deficits for the first two years of operations at loan closing; and

(ii) Enter into legal arrangements that commit them to making additional cash infusions to ensure that the operation will sustain a positive cash position on a quarterly basis throughout the five-year forecast period.

(2) For purposes of identifying the additional cash requirement for a start-up operation or an operation that has not demonstrated positive cash flow for the two years prior to the submission date of the application, 50 percent of projected revenues for each year of the five-year forecast period will be considered to determine if an operation can sustain a positive cash position. In addition to the initial financial projections required to demonstrate financial feasibility, such applicants must complete adjusted financial projections using the reduced revenue projections in order to identify the amount of additional cash that will be

required. Projections must be fully supported with assumptions acceptable to the Agency. The applicant may present evidence in its loan application that projected revenues or a portion of projected revenues are based on binding commitments and request that more than 50 percent of the projected revenues be considered for the purpose of identifying the additional cash requirement.

(3) For purposes of satisfying the additional cash requirements for an existing operation that has demonstrated a positive cash flow for the two fiscal years prior to the submission date of the application, 100 percent of the projected revenues for each year of the five-year forecast period will be used to determine if an operation can sustain a positive cash position, as long as these projections are fully supported with assumptions acceptable to the Agency.

(4) If debt is incurred to satisfy the additional cash requirement, this debt must take a subordinate lien position to the Agency debt and must be at terms acceptable to the Agency.

(b) An applicant may satisfy the additional cash requirement with an unconditional, irrevocable letter of credit (LOC) satisfactory to the Agency. The LOC must be issued from a financial institution acceptable to the Agency and must remain in effect throughout the forecast period. The applicant and the Agency must both be payees under the LOC. The LOC must have payment conditions acceptable to the Agency, and it must be in place prior to loan closing. The applicant cannot secure the LOC with its assets and cannot pay for any LOC charges or fees with its funds.

(c) If the Agency offers a loan to the applicant, the applicant must ensure that the additional cash infusion required in the first two years is deposited into its bank account within 120 days from the date the applicant signs the loan offer letter (see § 1738.251) and must enter into any other legal arrangements necessary to cover further projected operating deficits (or in the case of the LOC, to provide an acceptable LOC to the Agency) prior to closing. If these requirements are not completed within this timeframe, the loan offer will be terminated, unless the applicant requests and the Agency approves an extension based on extenuating circumstances that the Agency was not aware of at the time the offer was made.

(d) The Administrator may modify the requirements of this section for loans in service areas that are underserved when it is in the best interests of the Agency.

§ 1738.209 Market survey.

(a) Except as provided in paragraph (b) of this section, the applicant must complete a separate market survey for each service area where the applicant proposes to provide service at the broadband lending speed. Each market survey must demonstrate the need for the service at the broadband lending speed, support the projected penetration rates and price points for the services to be offered, and support the feasibility analysis. The market survey must also address all other services that will be provided in connection with the broadband loan. Additional information on the requirements of the market survey can be found in the Application Guide.

(b) The applicant is not required to complete a market survey for any service offering for which the applicant is projecting less than a 20 percent penetration rate in each service area by the end of the five-year forecast period. For example, if the applicant is projecting a penetration rate of 30 percent for data services and 15 percent for video services, a market survey must be completed for the data services. The proposed prices for those services with a projected penetration rate less than 20 percent must be affordable, as determined by the Agency.

(c) For a market survey to be acceptable to the Agency, it must have been completed within six months of the application submission date. The Agency may reject any application in which the financial projections are not supported by the market survey. If the demographics of the proposed service area have significantly changed since the survey was completed, the Agency may require an updated market survey.

(d) The Administrator may modify the requirements of this section for loans in service areas that are underserved when it is in the best interests of the Agency.

§ 1738.210 Competitive analysis.

The applicant must submit a competitive market analysis for each service area regardless of projected penetration rates. Each analysis must identify all existing service providers and all resellers in each service area regardless of the provider's market share, for each type of service the applicant proposes to provide. This analysis must include each competitor's rate packages for all services offered, the area that is being covered, and to the extent possible, the quality of service being provided.

§ 1738.211 Financial information.

(a) The applicant must submit financial information acceptable to the Agency that demonstrates that the applicant has the financial capacity to fulfill the loan requirements and to successfully complete the proposed project.

(1) If the applicant is an existing company, it must provide complete copies of audited financial statements (opinion letter, balance sheet, income statement, statement of changes in financial position, and notes to the financial statement) for the three fiscal years preceding the application submission. If audited statements are not available, the applicant must submit unaudited financial statements and tax returns for those fiscal years. Applications from start-up entities must, at a minimum, provide an opening balance sheet dated within 30 days of the application submission date.

(2) If the applicant is a subsidiary operation, it must also provide complete copies of audited financial statements for the parent operation for the fiscal year preceding the application submission. If audited statements are not available, unaudited financial statements and tax returns for the previous year must be submitted.

(3) If the applicant relies on services provided by an affiliated operation, it must also provide complete copies of audited financial statements for any affiliate for the fiscal year preceding the application submission. If audited statements are not available, unaudited statements and tax returns for the previous year must be submitted.

(4) Applicants must provide a list of all its outstanding obligations. Copies of existing notes and loan and security agreements must be included in the application.

(5) Applicants must provide a detailed description of working capital requirements and the source of these funds.

(b) Applicants must submit the following documents that demonstrate the proposed project's financial viability and ability to repay the requested loan.

(1) Customer projections for the five-year forecast period that substantiate the projected revenues for each service that is to be provided. The projections must be provided on at least an annual basis and must be developed separately for each service area. These projections must be clearly supported by the information contained in the market survey, unless no market survey is required (see § 1738.209(b)).

(2) Annual financial projections in the form of balance sheets, income statements, and cash flow statements for the five-year forecast period. Prior to the submission of an application, an applicant may request that alternative

information related to financial viability be considered when the applicant can for good cause demonstrate why a full five-year forecast cannot be provided. If this request is approved by the Agency, then the applicant can submit the application using the alternative information that was approved.

(i) These projections must use a system of accounts acceptable to the Agency and be supported by a detailed narrative that fully explains the methodology and assumptions used to develop the projections.

(ii) The financial projections submitted by the applicant must demonstrate that their entire operation will be able to meet a minimum TIER requirement equal to 1.25 by the end of the five-year forecast period. Demonstrating that the operation can achieve a projected TIER of 1.25 does not ensure that the Agency will approve the loan.

(iii) If the financial analysis suggests that the operation will not be able to achieve the required TIER ratio, the Agency will not approve the loan without additional capital, additional cash, additional security, and/or a change in the loan terms.

(c) Based on the financial evaluation, the loan documents will specify TIER requirements that must be met throughout the amortization period.

§ 1738.212 Network design.

(a) Applications must include a network design that demonstrates the project's technical feasibility. The network design must fully support the delivery of service at the broadband lending speed, together with any other services to be provided. In measuring speed, the Agency will take into account industry and regulatory standards. The design must demonstrate that the project will be complete within three years from the day the Agency notifies the applicant that loan funds are available and must include the following items:

(1) A detailed description of the proposed technology that will be used to provide service at the broadband lending speed. This description must clearly demonstrate that all households in the funded service area will be offered service at the broadband lending speed;

(2) A detailed description of the existing network. This description should provide a synopsis of the current network infrastructure;

(3) A detailed description of the proposed network. This description should provide a synopsis of the proposed network infrastructure;

(4) A description of measurable service metrics and target service level objectives (SLOs) that will be provided to the customer, and the methods that will be used to measure performance and respond to unmet SLOs;

(5) A description of the approach and methodology for monitoring ongoing service delivery and service quality for the services being deployed;

(6) Estimated project costs detailing all facilities that are required to complete the project. These estimated costs must be broken down to indicate costs associated with each proposed service area and must specify how Agency and non-Agency funds will be used to complete the project;

(7) A construction build-out schedule of the proposed facilities by service area on a quarterly basis. The build-out schedule must include:

(i) A description of the work force that will be required to complete the proposed construction;

(ii) A timeline demonstrating project completion within three years from the date the Agency notifies the applicant that loan funds are available;

(iii) Detailed information showing that all households within the funded service area will be offered service at the broadband lending speed when the system is complete; and

(iv) Detailed information showing that construction of the proposed facilities will start within six months from the date the Agency notifies the borrower that loan funds are available.

(8) A depreciation schedule for all facilities financed with loan and non-loan funds;

(9) An environmental report prepared in accordance with 7 CFR part 1794; and

(10) Any other system requirements required by the Administrator through a notice published in the **Federal Register**.

(b) The network design must be prepared by a registered Professional Engineer with telecommunications experience or by qualified personnel on the applicant's staff. If the network design is prepared by the applicant's staff, the application must clearly demonstrate the staff's qualifications, experience, and ability to complete the network design. To be considered qualified, staff must have at least three years of experience in designing the type of broadband system proposed in the application.

(c) The Administrator may modify the requirements of this section for loans in underserved service areas.

§ 1738.213 Loan determination.

(a) If the application meets all statutory and regulatory requirements and the feasibility study demonstrates that the TIER requirement can be satisfied, the application will be submitted to the Agency's credit committees for consideration. Submission of the application to the Agency's credit committees does not guarantee that a loan will be approved. In making a loan determination, the Administrator shall consider the recommendations of the credit committees.

(b) The applicant will be notified of the Agency's decision in writing. If the Agency approves the loan, a loan offer will be extended. If the Agency does not approve the loan, a rejection letter will be sent to the applicant, and the application will be returned with an explanation of the reasons for the rejection.

§§ 1738.214—1738.250 [Reserved]

Subpart F—Closing, Servicing, and Reporting

§ 1738.251 Loan offer and loan closing.

The Agency will notify the applicant of the loan offer, in writing, and the applicant will typically have 10 working days to accept the offer. If the applicant accepts the loan offer, a loan contract will be executed and sent to the applicant. The applicant must execute the loan contract and satisfy all conditions precedent to loan closing within the timeframe specified by the Agency which is typically 120 days from the date of the loan contract. If the conditions are not met within this timeframe, the loan offer will be terminated, unless the applicant requests and the Agency approves an extension. The Agency may approve such a request if the applicant has diligently sought to meet the conditions required for loan closing and has been unable to do so for reasons outside its control.

§ 1738.252 Construction.

(a) Construction paid for with broadband loan funds must comply with 7 CFR part 1788, 7 CFR part 1794, RUS Bulletin 1738–2 and any other guidance from the Agency.

(b) Upon notification by the Agency that an applicant has submitted all the required documentation and the application is considered complete for analysis (see § 1738.205), the applicant, at its own risk, may enter into an interim financing agreement with a third-party lender or use its own funds to start construction that is included in the loan application. For this construction to be eligible for reimbursement with loan funds, all construction procedures contained

herein must be followed. The Agency's determination that an application is complete is not a commitment that a loan will be approved.

(c) The borrower must begin construction within six months from the date the Agency notifies the applicant that loan funds are available. This is the final step in closing the loan with the applicant. If the borrower fails to begin construction, the Agency may cancel the loan.

(d) The build-out must be complete within three years from the day the Agency notifies the applicant that loan funds are available. Build-out is considered complete when the network design has been fully implemented, the service operations and management systems infrastructure is operational, and the borrower is ready to support the activation and commissioning of individual customers to the new system.

§ 1738.253 Servicing.

(a) Borrowers must make payments on the broadband loan as required in the note.

(b) Borrowers must comply with all terms, conditions, affirmative covenants, and negative covenants contained in the loan documents.

(c) In the event of default of any required payment or other term or condition:

(1) A late charge shall be charged on any payment not made in accordance with the terms of the note.

(2) The Agency may exercise the default remedies provided in the loan documents but is not required to do so.

(3) If the Agency chooses to not exercise its default remedies, it does not waive its right to do so in the future.

§ 1738.254 Accounting, reporting, and monitoring requirements.

(a) Borrowers must adopt a system of accounts for maintaining financial records acceptable to the Agency, as described in 7 CFR 1770, subpart B.

(b) Borrowers must submit annual audited financial statements along with a report on compliance and on internal control over financial reporting, and management letter in accordance with the requirements of 7 CFR part 1773. The Certified Public Accountant (CPA) conducting the annual audit is selected by the borrower and must be approved by RUS as set forth in 7 CFR 1773.4.

(c) Borrowers must comply with all reasonable Agency requests to support ongoing monitoring efforts. The Borrower shall afford RUS, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect the Broadband System, and any other property encumbered by the Mortgage, and any or all books, records, accounts, invoices, contracts, leases, payrolls, timesheets, cancelled checks, statements, and other documents, electronic or paper of every kind belonging to or in the possession of the Borrower or in anyway pertaining to its property or business, including its subsidiaries, if any, and to make copies or extracts therefore.

(d) Borrowers records shall be retained and preserved in accordance with the provisions of 7 CFR part 1770, subpart A.

§§ 1738.255–1738.300 [Reserved]

Subpart G—Loan Guarantee

§ 1738.301 General.

(a) Applicants wishing to obtain a loan guarantee for private financing are subject to the same requirements as direct loan borrowers with respect to:

(1) Loan purposes as described in Subpart B;

(2) Eligible borrowers and eligible areas as described in Subpart C;

(3) The loan terms described in Subpart D, with the exception of the interest rates described in § 1738.152; and

(4) The application review and underwriting requirements in Subpart E.

(b) The Agency will publish a notice annually in the **Federal Register** indicating any additional requirements, as well as the amount of funds available, if any, for loan guarantees.

§ 1738.302 Eligible guaranteed lenders.

To be eligible for a loan guarantee, a guaranteed lender must be:

(a) A financial institution in good standing that has been a concurrent lender with RUS; or

(b) A legally organized lending institution, such as commercial bank, trust company, mortgage banking firm, insurance company, or any other institutional investor authorized by law to loan money, which must be subject to credit examination and supervision by a Federal or State agency, unless the Agency determines that alternative examination and supervisory mechanisms are adequate.

§ 1738.303 Requirements for the loan guarantee.

At the time of application, applicants must provide in form and substance acceptable to the Agency:

(a) Evidence of the guaranteed lender's eligibility under § 1738.302;

(b) Evidence that the guaranteed lender has the demonstrated capacity to adequately service the guaranteed loan;

(c) Evidence that the guaranteed lender is in good standing with its licensing authority and meets the loan making, loan servicing, and other requirements of the jurisdiction in which the lender makes loans;

(d) Evidence satisfactory to the Agency of its qualification under this part, along with the name of the authority that supervises it;

(e) A commitment letter from the guaranteed lender that will be providing the funding, and the terms of such funding, all of which may be conditioned on final approval of the broadband loan guarantee by the Agency; and

(f) A description of any and all charges and fees for the loan, along with documentation that they are comparable to those normally charged other applicants for the same type of loan in the ordinary course of business. Such charges and fees will not be included within the Agency's loan guarantee.

§ 1738.304 Terms for guarantee.

Loan guarantees will only be given on the conditions that:

(a) The loan guarantee is no more than 80 percent of the principal amount, which shall exclude any and all charges and fees;

(b) The guarantee is limited to the outstanding loan repayment obligation of the borrower and does not extend to guaranteeing that the guaranteed lender will remit to a holder, loan payments made by the borrower;

(c) The interest rate must be fixed and must be the same or lesser for the guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed amount equivalent, as the case may be, and unguaranteed loan amount or the respective unguaranteed loan portion amount or the respective unguaranteed-amount equivalent, as the case may be;

(d) The entire loan will be secured by the same security with equal lien priority for the guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed-amount equivalent, as the case may be, and unguaranteed loan amount or the respective unguaranteed loan portion amount or the respective unguaranteed-amount equivalent, as the case may be;

(e) The unguaranteed loan amount or the respective unguaranteed loan portion amount or the respective unguaranteed-amount equivalent, as the case may be, will neither be paid first nor given any preference or priority over the guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed-amount equivalent, as the case may be;

(f) Prior written approval is obtained from the Agency for any assignment by the guaranteed lender. Any assignment shall entitle the holder to all of the guaranteed lender's rights but shall maintain the guaranteed lender responsible for servicing the entire loan;

(g) The borrower, its principal officers, members of the borrower's board of directors and members of the immediate families of said officials shall not be a holder of the guaranteed lender's loan;

(h) The Agency will not guarantee any loan under this subpart that provides for a balloon payment of principal or interest at the final maturity date of the loan or for the payment of interest on interest;

(i) All loan guarantee documents between the Agency and the guaranteed lender are prepared by the Agency; and

(j) The guaranteed loan agreement between the borrower and the lender shall be subject to Agency approval.

§ 1738.305 Obligations of guaranteed lender.

Once a loan guarantee has been approved, the guaranteed lender will be responsible for:

(a) Servicing the loan;

(b) Determining that all prerequisites to each advance of loan funds by the lender under the terms of the contract of guarantee, all financing documents, and all related security documents have been fulfilled;

(c) Obtaining approval from the Agency to advance funds prior to each advance;

(d) Billing and collecting loan payments from the borrower;

(e) Notifying the Administrator promptly of any default in the payment of principal and interest on the loan and submit a report no later than 30 days thereafter, setting forth the reasons for the default, how long it expects the borrower will be in default, and what corrective actions the borrower states that it is taking to achieve a current debt service position; and

(f) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, contract of guarantee, or related security instruments or conditions of which the lender is aware which might lead to nonpayment, violation, or other default.

§ 1738.306 Agency rights and remedies.

(a) The guarantee must provide that upon notice to the lender, the Agency may assume loan servicing responsibilities for the loan or the guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed-amount equivalent, as the case may be, or require the lender to assign such responsibilities to a different entity, if the lender fails to perform its loan servicing responsibilities under the loan guarantee agreement, or if the lender becomes insolvent, makes an admission in writing of its inability to pay its debts generally as they become due, or becomes the subject of proceedings commenced under the Bankruptcy Reform Act of 1978 (11 U.S.C. 101 *et seq.*) or any similar applicable Federal or State law, or is no longer in good standing with its licensing authority, or ceases to meet the eligibility requirements of this subpart. Such negligent servicing is defined as the failure to perform those services which a reasonable prudent lender would perform in servicing its own portfolio of loans that are not guaranteed and includes not only a failure to act but also not acting in a timely manner.

(b) The guarantee shall cease to be effective with respect to any guaranteed loan amount or any guaranteed loan portion amount or any guaranteed-amount equivalent to the extent that:

(1) The guaranteed loan amount or the respective guaranteed loan portion amount or the respective guaranteed amount equivalent, as the case may be, is separated at any time from the unguaranteed loan amount or the respective unguaranteed loan portion amount or the respective unguaranteed-amount equivalent, as the case may be, in any way, directly or through the issuance of any guaranteed-amount equity derivative or any guaranteed-amount debt derivative; or

(2) Any holder of the guaranteed loan note or any guaranteed loan portion note or any derivative, as the case may be, having a claim to payments on the guaranteed loan receives more than its pro-rata percentage of any payment due to such holder from payments made under the guarantee at any time during the term of the guaranteed loan.

§ 1738.307 Additional policies.

The Agency shall provide additional loan guarantee policies, consistent with OMB Circular A–129, in order to achieve its mission of promoting broadband in rural areas, which shall be published annually in the **Federal Register**.

§ 1738.308 Full faith and credit of the United States.

Loan guarantees made under this part are supported by the full faith and credit of the United States and are incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

§§ 1738.309–1738.349 [Reserved]

§ 1738.350 OMB control number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0572–0130.

Dated: March 8, 2011.

Jessica Zufolo,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2011–5615 Filed 3–11–11; 8:45 am]

BILLING CODE 3410–15–P

Notices

Federal Register
Vol. 76, No. 49
Monday, March 14, 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

Rural Utilities Service

Rural Broadband Access Loans and Loan Guarantees Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: This NOSA announces that the Rural Utilities Service (RUS) is accepting applications for fiscal year (FY) 2011 for the Rural Broadband Access Loan and Loan Guarantee program (the Broadband Program), subject to the availability of funding. This notice is being issued prior to passage of a final appropriations act to allow potential applicants time to submit proposals and give the Agency time to process applications within the current fiscal year. RUS will publish a subsequent notice identifying the amount received in the final appropriations act, if any. At this time, the agency estimates that approximately $700 million may be available for loans from prior appropriations; however, Congress is presently reviewing budget authority across the Federal government in an attempt to reduce government debt. As a result, expenses incurred in developing applications will be at the applicant's own risk.

In addition to announcing the application window, RUS announces the minimum and maximum amounts for broadband loans for the fiscal year. Moreover, the agency is concurrently publishing a interim rule that will revise the current Broadband Program regulations at 7 CFR part 1738, as necessitated by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill).

DATES: Applications under this NOSA will be accepted immediately, subject to the requirements of the interim regulation published concurrently with this NOSA.

FOR FURTHER INFORMATION CONTACT: For further information contact Kenneth Kuchno, Director, Broadband Division, Rural Development, STOP 1599, 1400 Independence Avenue, SW., Washington, DC 20250–1599, Telephone (202) 690–4673, Facsimile (202) 690–4389.

SUPPLEMENTARY INFORMATION:

Application Requirements and Addresses

All requirements and addresses for submission of an application under the Broadband Program will be set forth in the interim regulation published concurrently with this NOSA.

Application Materials

Applications for the Broadband Program will be available at *http://www.rurdev.usda.gov/utp_farmbill.html.*

General Information

The Rural Broadband Access Loan and Loan Guarantee Program is authorized by the Rural Electrification Act (7 U.S.C. 901 *et seq.*), as amended by the 2008 Farm Bill.

Applications must be submitted in accordance with the interim regulation published concurrently with this NOSA. This application guide to assist in the preparation of applications is available at: *http://www.rurdev.usda.gov/utp_farmbill.html.* Application guides may also be requested from RUS by contacting the agency contact.

Minimum and Maximum Loan Amounts

Loans under this authority will not be made for less than $100,000. The maximum loan amount that will be considered for FY 2011 is $100 million.

Required Definitions for Broadband Program Regulation

The interim regulation for the Broadband Program requires that certain definitions affecting eligibility be revised and published from time to time by the agency in the **Federal Register**. For the purposes of this interim regulation, the agency shall use the following definitions:

Broadband Service and Broadband Lending Speed. Until otherwise revised in the **Federal Register,** for applications in FY 2011, to qualify as broadband service, the minimum rate-of-data transmission shall be three megabits per second (download plus upload speeds) for both fixed and mobile broadband service and the broadband lending speed will be a minimum bandwidth of 5 megabits per second for both fixed and mobile service to the customer (download plus upload speeds).

Incumbent Service Provider. For a service provider to be considered an incumbent service provider they must demonstrate that five percent of the households in a proposed funded service area are buying broadband service from them.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with Broadband loans, as covered in this NOSA, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0130.

Dated: March 8, 2011.

Jessica Zufolo,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2011–5611 Filed 3–11–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Monday,
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Part IV

Federal Communications Commission

47 CFR Parts 1, 6, 7 et al.
Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 6, 7, and 8

[CG Docket No. 10–213; WT Docket No. 96–198; CG Docket No. 10–145; FCC 11–37]

Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to adopt rules that implement provisions in section 104 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), the most significant piece of accessibility legislation since the passage of the Americans with Disabilities Act in 1990. This proceeding would update and amend the Commission's rules to ensure that individuals with disabilities are able to fully utilize advanced communications services (ACS) and equipment and networks used for such services. Specifically, we seek comment on ways to implement the CVAA's requirements on providers of ACS and manufacturers of equipment used for ACS to make their services and products accessible to people with disabilities. The intended effect is to promote rapid deployment of and universal access to broadband services for all Americans across the country, because broadband technology can stimulate economic growth and provide opportunity for all Americans.

DATES: Submit comments on or before April 13, 2011. Submit reply comments on or before May 13, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov.* You may submit comments, identified by FCC 11–37, or by CG Docket No. 10–213, WT Docket No. 96–198, CG Docket No. 10–145, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Hu, Broadband Division, Wireless Telecommunications Bureau, FCC at (202) 418–7120 or via the Internet to *David.Hu@fcc.gov,* or Rosaline Crawford, Disability Rights Office, Consumer and Governmental Affairs Bureau, FCC at (202) 418–2075 or via the Internet to *Rosaline.Crawford@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or submit your PRA comments via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* FCC 11–37, adopted on March 2, 2011, and released on March 3, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs_public/attachment/FCC-11-37A1doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

Summary

I. Introduction and Overview

1. This Notice of Proposed Rulemaking ("NPRM") initiates a proceeding to update the Commission's rules to ensure that the 54 million individuals with disabilities are able to fully utilize advanced communications services and equipment and networks used for such services. Also, this NPRM proposes to adopt rules that implement provisions in section 104 of the "Twenty-First Century Communications and Video Accessibility Act of 2010" (hereinafter referred to as the "CVAA"), Public Law 111–260, 124 Stat. 2751 (2010), the most significant piece of accessibility legislation since the passage of the Americans with Disabilities Act in 1990 ("ADA"). (*See also* Public Law 111–265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA)).

2. In explaining the need for the CVAA, Congress noted that the communications marketplace has undergone a "fundamental transformation" since Congress acted to ensure access to telecommunications services and equipment by people with disabilities as part of the Telecommunications Act of 1996. See S. Rep. No. 111–386 (2010) and H.R. Rep. No. 111–563 (2010). Specifically, Congress stated that since it added section 255 to the Communications Act of 1934, as amended (hereinafter referred to as "the Communications Act" or "the Act"), "Internet-based and digital technologies * * * driven by growth in broadband * * * are now pervasive, offering innovative and exciting ways to communicate and share information." Congress found, however, that people with disabilities often have not shared in the benefits of this rapid technological advancement and that they face disproportionately higher rates of unemployment and poverty than those without disabilities. Recent surveys confirmed this finding, showing a gap of 38 percentage points in the rates of employment of working-age people with disabilities and those without disabilities (21% v. 59%) and a gap of 27 percentage points in the rates of Internet access (54% v. 81%).

3. These trends are even more troubling when one considers the pace at which the communications marketplace is changing and how we as a society are becoming more dependent on such technologies to succeed in the workplace and to manage our daily lives. Statistics show, for example, that more than ever, Americans rely on their mobile phones for much more than phone service. Increasingly, wireless handsets have evolved into multi-media devices capable of accessing the Internet, sending e-mails or text messages, downloading music, and viewing streaming video programming that can, for example, enable distance education and telemedicine. As described in the National Broadband Plan, one of the Commission's most important policy objectives is the rapid deployment of and universal access to

broadband services for all Americans across the country, because broadband technology can stimulate economic growth and provide opportunity for all Americans. To that end, the recommendations in the National Broadband Plan were consistent with the objectives set forth in the CVAA. This law will bring existing communication laws protecting people with disabilities in line with 21st Century technologies by ensuring that people with disabilities are not left behind and that they will be able to share fully in the economic, social, and civic benefits of broadband.

4. This NPRM seeks comment on the way in which we should implement the requirements of sections 716 and 717, which were added by section 104 of Title I of the CVAA. The statute requires the Commission to adopt rules within one year of enactment. section 716 requires that providers of "advanced communications services" (or "ACS") and manufacturers of equipment used for ACS make their services and products accessible to people with disabilities, unless it is not achievable to do so. The CVAA provides flexibility to the industry by allowing covered entities to comply with section 716 by either building access features into their equipment or services or relying on third party applications, peripheral devices, software, hardware, or customer premises equipment (or "CPE") that is available to individuals with disabilities at nominal cost. If such compliance is not achievable, covered entities must ensure that their equipment and services are compatible with "existing peripheral devices or specialized customer premises equipment" commonly used by persons with disabilities to achieve access, unless it is not achievable to do so. Section 717 requires that the Commission establish new recordkeeping and enforcement procedures for manufacturers and providers subject to section 255 and section 716. Appendix D contains the full text of the CVAA as enacted (Pub. L. 111–260 and Pub. L. 111–265).

5. While section 255 of the Act will be the starting point for our implementation of these sections, our proposed approach reflects several important differences between section 255 and section 716. First, section 716 covers a broader scope of services and related equipment than section 255. In addition, relative to section 255, section 716 requires a higher standard of achievement for covered entities but also allows for greater flexibility in how to accomplish these requirements. In the NPRM, we propose to adopt a new rule part to implement sections 716 and 717 of the Act and to amend the rules implementing section 255 of the Act to incorporate any relevant definitional changes in section 716 and establish the new recordkeeping and enforcement procedures set forth in section 717. The regulatory oversight we propose in this proceeding is not intended to prejudge the scope of the Commission's authority in other proceedings that derive from different statutory grants of authority.

6. The NPRM also seeks comment on section 718, which is effective three years after the date of enactment of the CVAA and requires manufacturers and service providers to make Internet browsers built into mobile phones accessible to people who are blind or have visual impairments. Specifically, the NPRM seeks input on what steps the Commission and stakeholders can take to ensure that manufacturers and service providers can meet their obligations when section 718 goes into effect in 2013.

II. Background

7. Section 255 of the Act, which was added by the Telecommunications Act of 1996, requires manufacturers of telecommunications equipment and providers of telecommunications services to ensure that their equipment and services are accessible to and usable by people with disabilities, if readily achievable. When the accessibility requirements of section 255 are not readily achievable, manufacturers and service providers must ensure compatibility with existing peripheral devices or specialized CPE commonly used by individuals with disabilities, if readily achievable. A related provision in section 251(a)(2) of the Act prohibits a telecommunications carrier from installing network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to section 255.

8. Section 255 directed the United States Access Board ("Access Board") to work with the Commission to establish guidelines for the accessibility of telecommunications equipment and CPE within 18 months of enactment. In June 1996, the Access Board convened the Telecommunications Access Advisory Committee (TAAC), a federal advisory committee consisting of consumer, industry, and government stakeholders, for this purpose. The TAAC delivered its final report to the Access Board in January 1997, which the Access Board then used to develop its section 255 guidelines. In September 1999, the Commission adopted a Report and Order adding parts 6 and 7 to its rules to implement section 255, in large part incorporating the Access Board's guidelines for telecommunications equipment and customer premises equipment ("CPE"). In addition to drawing heavily on these guidelines for its rules implementing section 255 of the Act on telecommunications equipment and CPE (in part 6 of its rules), the Commission utilized the general principles contained in these guidelines to outline the general obligations of telecommunications service providers. In part 7 of these rules, the Commission also used its ancillary jurisdiction to adopt rules relating to voicemail and interactive voice response providers and equipment manufacturers. In 2007, the Commission extended its section 255 accessibility rules to interconnected Voice-over-Internet Protocol ("VoIP") service providers and equipment manufacturers.

9. The rules adopted to implement section 255 require that where readily achievable, manufacturers and service providers must evaluate the accessibility, usability, and compatibility features of covered services and equipment; incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible; and identify barriers to accessibility and usability as part of the product design and development process. The rules also provide that where readily achievable, manufacturers and service providers must ensure that product and service information and documentation provided to customers is accessible to customers with disabilities. In addition, under the rules, equipment manufacturers must pass through cross-manufacturer, nonproprietary, industry-standard codes, translation protocols, formats or other information necessary to provide telecommunications in an accessible format, where readily achievable. The rules also contain an informal complaint procedure by which manufacturers and service providers must attempt to resolve the complainant's concerns and respond to the Commission within 30 days.

10. In 2006, the Access Board initiated a review of its accessibility guidelines for telecommunications equipment and CPE covered under section 255 of the Act and its standards for electronic and information technology covered under section 508 of the Rehabilitation Act. Under section 508, federal agencies must "develop, procure, maintain, and use" electronic and information technologies that are accessible to people with disabilities, unless doing so would cause an undue burden. The goal of this review was to

bring the section 255 and section 508 guidelines and standards up to date and to harmonize them with each other and international accessibility standards. Again, the Access Board established an advisory board of interested stakeholders for this purpose, and in April 2008, the Telecommunications and Electronic and Information Technology Advisory Committee ("TEITAC") issued its final report, containing a set of recommended updates to these guidelines and standards. In March 2010, the Access Board released for public comment draft information and communication technology ("ICT") guidelines and standards, which were based on these stakeholder recommendations.

11. During the spring of 2010, the Consumer and Governmental Affairs Bureau ("CGB") and the Wireless Telecommunications Bureau ("WTB") ("the Bureaus") held two workshops to explore the telecommunications access needs of people with disabilities, along with solutions to address these barriers. At the first of these, held on May 13, 2010, the Commission received feedback on expanding disability access to wireless telecommunications; at the second, held on June 15, 2010, young adults who are deaf-blind discussed the barriers they experience in accessing telecommunications and in obtaining information about accessible technologies.

12. Building on those workshops, on July 19, 2010, the Bureaus issued a public notice in DA 10–1324, in CG Docket No. 10–145 expressing the concerns "that people who are blind or have other vision disabilities have few accessible and affordable wireless phone options" and "that many wireless technologies may not be compatible with Braille displays needed by individuals who are deaf-blind." The July public notice sought comment on, among other things, the barriers faced by these populations, the cost and feasibility of technical solutions, and the actions that the agency should take to address the current lack of access. The Bureaus received over 200 submissions in the record from consumers, consumer groups, trade associations, and individual companies, many of whom provided details about the lack of access to basic and smart phones. While staff continues to consider the steps the agency should take to address those concerns, we have incorporated the record from the July public notice into the record of this proceeding because the record in CG Docket No. 10–145 is particularly relevant and may inform our understanding of the issues raised here, including the difficulties that people with disabilities face in finding accessible products and getting the technical and customer support that they need in today's marketplace.

13. On October 21, 2010, CGB and WTB issued a public notice in DA 10–2029, seeking input on key provisions in sections 716, 717, and 718 of the Communications Act, as amended by the CVAA. The Bureaus received 24 comments and 25 reply comments, which have helped to shape the development of this NPRM.

III. Statutory Definitions

A. Scope of Coverage

1. Background

14. Section 716 of the Act covers a broad array of manufacturers of equipment and providers of services that are not covered under section 255. As discussed in more detail *below,* the requirements of section 716 apply to the manufacturers of equipment used for non-interconnected VoIP services, electronic messaging services, and interoperable video conferencing services (all of which are "advanced communications services" as defined in section 3(1) of the Act) and the providers of those services. (Although interconnected VoIP service also constitutes an ACS, such service is subject to section 255 of the Act and thus need not comply with the requirements of section 716.) We agree with AT&T's statement that "section 716 reflects the reality that ACS is delivered in a complex Internet ecosystem" and that "[a]ccessibility obligations must be shared by all entities in that ecosystem for consumers to have an accessible experience." We discuss the evolution of the "complex Internet ecosystem" below and seek further comment on how we should interpret section 716 requirements, in light of this evolution and the statute's broader purposes of ensuring that ACS and equipment used for ACS is accessible to and usable by people with disabilities.

15. Since section 255 was first enacted, communication technology has changed significantly, both in terms of its usage of the Internet and packet-switched networks instead of circuit-switched networks and in its common architecture. In many cases, communication devices had a single function, and were created by a single manufacturer and often closely tied to a specific communication service or network. As the fixed and mobile Internet has evolved, mass-market communication devices are now often general-purpose computers or devices such as smart phones incorporating aspects of general-purpose computers, with an architecture reflecting the evolution of computer technology. This architecture has been common for personal computers since the 1980s, but has more recently also made its way into mobile devices such as smart phones and tablets, and into entertainment devices such as game consoles and set-top boxes. In all of these cases, systems can be divided into at least five components that can be pictured, roughly, as layers, with the hardware at the bottom and the application and services at the top:

- Hardware (commonly referred to as the "device"): Every advanced communications service relies on hardware with general-purpose computing functionality. It typically includes a computing component ("CPU"), several kinds of memory, one or more network interfaces (cellular, IEEE 802.11 "WiFi," Ethernet, Bluetooth, etc.), built-in peripherals such as keyboards and displays, and both generic and dedicated-purpose interfaces to external peripherals. A common example of a generic interface is a USB interface, as it can support just about any input or output technology, from audio to keyboards and cameras. A dedicated-purpose interface can only support one media type, such as audio.
- Operating system ("OS"): The OS manages the system resources enumerated above and provides common functionality, such as network protocols, to applications. Almost all devices with a CPU have an OS.
- User interface layer: Most modern devices have a separate user interface ("UI") layer upon which almost all applications rely to create their graphical user interface. Currently, the OS and user interface layer are typically provided as a package and are often referred to collectively as the OS, but this is not always the case. For example, at least one common OS allows users to replace the user interface layer. In many cases, web browsers are considered to be part of the UI layer although they themselves are also an application.
- Application (commonly referred to as an "app"): Software is used to implement the actual advanced communications functionality. The software may be embedded into the device and non-removable, installed by the system integrator or user, or reside in the cloud.
- Network services: Advanced communication applications, such as VoIP, rely on network services to interconnect users. These networks perform many functions, ranging from user authentication and authorization to call routing and media storage. In many

cases, such network services simply route the call signaling information and do not touch the actual media exchanged. In these cases, the service itself may not know or care what kind of media (audio, video, text) is exchanged between communicating end systems. In other cases, the network services may perform more than transport functions and offer video, voice, and other data capabilities.

While the particulars of the above components have evolved, the basic architecture has remained stable for several decades and there are no obvious successors under development in the research community. Thus, it appears reasonably safe to assume that this division will continue for the immediate future, although we note that the components listed above overlap with each other.

16. Because each of the above components may be created by a different manufacturer and sold separately, this division has three major consequences. First, a manufacturer or provider of one component may have limited ability to know which other components are being used to deliver an advanced communications service. For example, a PC- and web-based collaboration service can run on most personal computers, using an almost infinite set of combinations of hardware, operating systems and web browsers. Second, components of the service can change over time. Users can often upgrade their hardware, OS, or application, without consulting with the manufacturer or provider of the other components. Third, the accessibility features of each component are likely to evolve over time. Manufacturers of hardware, OS, and user interface layers may not know whether the components they produce will be used for advanced communications services in the future and for which ones.

17. In order to enable individuals with disabilities to use an advanced communications service, all of the components may have to support accessibility features and capabilities. Conversely, if one component does not offer a particular function, it is often impossible for another component to compensate for that omission. For example, only the hardware component can support an audio jack or a connection to an external Braille device, while only the OS and user interface layer can enable screen readers. In addition, it should be noted that while upper layers cannot make up for the lack of accessibility features at the lower layers, they can impede their use. For example, an application could render text in such a way that screen readers or Braille devices cannot function, *e.g.,* to protect content against extraction as part of digital rights management functionality. While this environment complicates the ability to implement capabilities that support people with disabilities, we also recognize that these challenges are inherent in the design of any mass market application or hardware device. At the same time, we recognize that this environment also has the potential to provide new solutions for people with disabilities which were not previously possible.

18. We seek comment on whether the above description accurately reflects the basic architecture and components involved in the delivery of ACS. Below, we seek comment on how we should interpret the statute's directives, in light of the architecture and components discussed above.

2. Manufacturers of Equipment Used for Advanced Communications Services

19. Section 716(a) of the Act provides that, with respect to equipment manufactured after the effective date of applicable regulations established by the Commission and subject to those regulations, the accessibility obligations apply to a "manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software * * * that such manufacturer offers for sale or otherwise distributes in interstate commerce."

20. We first seek comment on the meaning of the term "manufacturer." We note that in our rules implementing section 255 of the Act we define "manufacturer" as "an entity that makes or produces a product." In the *Section 255 Report and Order,* we found that "[t]his definition puts responsibility on those who have direct control over the products produced, and provides a ready point of contact for consumers and the Commission in getting answers to accessibility questions and resolving complaints." We propose to adopt the same definition of "manufacturer" in our rules implementing section 716 and seek comment on this proposal.

21. We also seek comment on the meaning of "end user equipment," "network equipment" and "software," as those terms are used in section 716(a). We propose to define "end user equipment" as including hardware as described above; "software" includes the OS, the user interface layer, and applications, as described above, that are installed or embedded in the end user equipment by the manufacturer of the end user equipment or by the user; and "network equipment" includes equipment used for network services, as described above. We seek comment on whether upgrades to the software (OS, user interfaces, or applications) by manufacturers are encompassed in these definitions. We also seek comment on whether there are any circumstances in which a manufacturer of end user equipment would be responsible for the accessibility of software that is installed or downloaded by the user. In particular, we seek comment on commenters' assertions that the limitations on liability in section 2(a) of the CVAA generally preclude manufacturers from being liable for third party applications that are installed or downloaded by the consumer.

22. In addition, we seek comment on the meaning of the phrase "used for advanced communications services," in section 716(a), for the purposes of determining a manufacturer's obligations under this section. As a general matter, must equipment subject to section 716(a) be capable of offering ACS on a standalone basis or merely support ACS in some way? If the former, then how should this standard be applied, for example, to Internet-enabled ACS intended to run on separately distributed general computing platforms?

23. We also seek comment on the meaning of "offers for sale or otherwise distributes in interstate commerce" by "such manufacturer." Hardware, as described above, commonly meets this definition. We seek comment on whether other components that are used for advanced communications services are offered for sale or otherwise distributed in interstate commerce by the manufacturer when installed or embedded by the manufacturer. We propose to treat generally the act of a manufacturer's making software available for download as a form of distribution. We seek comment, however, for purposes of the CVAA, on what should constitute making software available for download.

24. We propose to hold manufacturers of end user equipment responsible for the accessibility of their products, including the software, such as the OS, the user interface layer, and the applications that they install. We also propose to find manufacturers of software used for advanced communications services that is offered for sale or otherwise distributed in interstate commerce by such manufacturers and that is downloaded or installed by the user as being covered by section 716(a).

3. Providers of Advanced Communications Services

25. Section 716(b)(1) of the Act provides that, with respect to service providers, after the effective date of applicable regulations established by the Commission and subject to those regulations, a "provider of advanced communications services shall ensure that such services offered by such provider in or affecting interstate commerce are accessible to and usable by individuals with disabilities," unless these requirements are "not achievable."

26. In the *Section 255 Report and Order,* the Commission found that providers of telecommunications services include resellers and aggregators. The Commission's decision was based on its interpretation of the statutory definition of "telecommunications carrier" as defined in section 3(51) of the Act. Specifically, the Commission noted that "[section 3(51)] states that a 'telecommunications carrier' means any 'provider of telecommunications services' with the exception of aggregators, thus indicating that a 'provider of telecommunications services' would otherwise include aggregators." While the CVAA does not provide similar guidance with respect to the definition of provider of ACS, we believe that the general principle that the Commission adopted in the *Section 255 Report and Order*—that "Congress intended to use the term "provider" broadly * * * to include all entities that make telecommunications services available"—has applicability here. Accordingly, we propose to find providers of ACS to include all entities that make ACS available in or affecting interstate commerce, including resellers and aggregators. We seek comment on this proposal.

27. We also seek comment on additional issues relating to the meaning of "providers of advanced communications services." We propose to find such providers to include entities that provide ACS over their own networks as well as providers of applications or services accessed (*i.e.,* downloaded and run) by users over other service providers' networks, as long as these providers make advanced communications services available in or affecting interstate commerce. We also seek comment on whether there are any circumstances in which a service provider would be responsible for the accessibility of third party services and applications or whether the liability provisions in section 2(a) of the CVAA would generally preclude such a result. We seek comment on these proposed approaches and on whether the fact that we are required under section 716(e)(1)(C) to "determine the obligations under this section of manufacturers, service providers, and providers of applications or services accessed over service provider networks" should have any bearing on how we interpret the meaning of providers of ACS. Specifically, we seek comment on the meaning of "providers of applications or services accessed over service provider networks" and how this term differs from "providers of advanced communications services." Finally, we also seek comment on the meaning of "in or affecting interstate commerce." Are there any circumstances in which advanced communications services that are downloaded or run by the user would not meet this definition?

4. Advanced Communications Services

28. Section 3(1) of the Act defines "advanced communications services" to mean (A) Interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service. That provision sets forth definitions for each of these terms.

a. Interconnected VoIP Service

29. Section 3(25) of the Act, as added by the CVAA, provides that the term "interconnected VoIP service" has the meaning given in § 9.3 of the Commission's rules, as such section may be amended. § 9.3 of the Commission's rules, in turn, defines interconnected VoIP as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible CPE; and (4) permits users generally to receive calls that originate on the public switched telephone network ("PSTN") and to terminate calls to the PSTN. We propose to continue to define interconnected VoIP in accordance with § 9.3 of the Commission's rules. We seek comment on this proposal.

30. Section 716(f) of the Act provides that "the requirements of this section shall not apply to any equipment or services, including interconnected VoIP service, that are subject to the requirements of section 255 on the day before the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010." In the *October Public Notice,* the Bureaus sought comment on how to address the accessibility obligations of equipment that is used to provide both telecommunications and advanced communications services and how to treat interconnected VoIP. In its comments, AT&T states that "the Commission should subject multi-purpose devices to section 255 to the extent that the device provides a service that is already subject to section 255 and apply section 716 solely to the extent that the device provides ACS that is not otherwise subject to section 255." We seek comment on AT&T's interpretation and also seek comment on alternative interpretations of section 716(f).

b. Non-interconnected VoIP Service

31. Section 3(36) of the Act, as added by the CVAA, states that the term "non-interconnected VoIP service" means a service that "(i) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and (ii) requires Internet protocol compatible customer premises equipment" and that "does not include any service that is an interconnected VoIP service." We propose to define "non-interconnected VoIP service" in our rules in the same way and seek comment on this proposal.

32. We propose to treat any offering that meets the criteria of the statutory definition set forth above as a "non-interconnected VoIP service," and note that the statutory definition of non-interconnected VoIP does not exclude offerings with a purely incidental VoIP component. We seek comment on this proposal. We also note that, as discussed below, the statute allows the Commission to waive the requirements of section 716 for equipment or services "designed primarily for purposes other than using advanced communications service." In addition, as discussed below, section 716(i) provides that the requirements of this Section do not apply to "customized equipment or services that are not offered directly to the public."

c. Electronic Messaging Service

33. Section 3(19) of the Act, as added by the CVAA, states that the term "electronic messaging service" means a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks. In accordance with this definition, we propose to define this term in the Commission's rules as "a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks." Consistent with language of the Senate and House Reports, we also propose that electronic messaging service includes "more traditional, two-way interactive services such as text messaging, instant messaging, and

electronic mail, rather than * * * blog posts, online publishing, or messages posted on social networking websites." We seek comment on these proposed definitions. For reasons similar to those discussed below in the section on interoperable video conferencing services, we believe that Internet protocol relay ("IP Relay") services that otherwise fit the definition of "electronic messaging services" are services subject to the requirements of section 716.

34. We also seek comment on the assertion of several commenters that the phrase "between individuals" in the above definition precludes the application of the accessibility requirements to communications in which no human is involved, such as automatic software updates or other device-to-device or machine-to-machine communications. In addition, we seek comment on TIA's assertion that "services and applications that merely provide access to an electronic messaging service, such as a broadband platform that provides an end user access to an HTML-based e-mail service, are not covered."

d. Interoperable Video Conferencing Service

35. Section 3(1) of the Act, as added by the CVAA, defines the term "advanced communications services" to include "interoperable video conferencing service," which, in turn, is defined in section 3(27) as "a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing." We note that while earlier versions of the legislation did not include the word "interoperable" in the definition of the term "advanced communications services," the definition of "interoperable video conferencing services" in the enacted legislation is identical to the definition of "video conferencing services" found in earlier versions. In addition, language in the Senate Report regarding "interoperable video conferencing services" is identical to language in the House Report regarding "video conferencing services." Both the Senate Report and the House Report state, for example, that "[t]he inclusion * * * of these services within the scope of the requirements of this act is to ensure, in part, that individuals with disabilities are able to access and control these services" and that "such services may, by themselves, be accessibility solutions." In light of the above symmetries between the earlier and later versions of this definition, as well as the reports prepared by each chamber of Congress, we will first seek comment on the meaning of "video conferencing service" and then on the meaning of "interoperable" in this context.

i. Video Conferencing Service

36. We first seek comment on what services meet the statutory definition of "providing * * * real-time video communications, including audio, to enable users to share information of the user's choosing" and what end user equipment, network equipment, and software are used for these services. We propose to classify a range of services and end user equipment under this statutory definition, including, but not limited to videophones and software applications used for conversation between and among users. Such end user equipment includes smart phones and computers with the capability of using interactive video, text and audio conferencing applications such as the Apple iPhone 4.0, Motorola Droid X and computers and videophones such as ASUS Skype, Grandstream, Ojo, and Polycom. Examples of video conferencing software applications include, for example, Google Voice & Video Chat, ooVoo, AOL Instant Message ("AIM") Chat, WebEx, and Skype. We seek comment on this proposal.

37. We also seek comment on whether video relay services ("VRS") meet the above definition. VRS is a form of TRS under section 225 of the Act that enables individuals who are deaf or hard of hearing and who use American Sign Language to communicate over distances with voice telephone users through a remotely located sign language interpreter called a CA. The person who is deaf or hard of hearing makes a VRS call using video equipment (a television or a computer with a video camera device) that connects such individual with the CA over a broadband connection. The CA then relays the conversation between the parties—in sign language with the VRS user (the "video leg"), and by voice with the telephone user (the "telephone leg"). Voice telephone users can also initiate VRS calls by simply dialing the telephone number of the person who uses sign language. The call is then automatically connected to a CA, who then relays the conversation.

38. Commenters disagree about whether the CVAA covers the video conferencing service and equipment used in the provision of VRS. Sorenson cites to the legislative history and submits that "Section 716 was intended to cover mass market services and equipment (such as personal computers and smart phones) that have not been designed for use by people with disabilities, not services and equipment (such as VRS and point-to-point) that have been designed specifically to be accessible to and usable by persons with disabilities." Consumer Groups disagree, stating that "VRS equipment and [video conferencing] services * * * should be made accessible in accordance with the Accessibility Act, if achievable." Sorenson also asserts that the phrase "including audio" in the definition suggests the exclusion of VRS "video conferencing service" or equipment. Consumer Groups reject Sorenson's assertion because widely distributed VRS equipment includes audio functions that "benefit users who engage in voice carryover ('VCO') and hearing carryover ('HCO')."

39. We agree with Consumer Groups and believe that the "video leg" of a VRS call meets the statutory definition of "provid[ing] * * * real-time video communications, including audio, to enable users to share information of the user's choosing." Just as a voice telephone user uses telecommunications services and equipment to communicate with the VRS CA (the "telephone leg" of a VRS call), we propose to find that a VRS consumer uses video conferencing services and equipment to communicate with the VRS CA (the "video leg" of a VRS call). We find nothing in the statute or the legislative history to suggest that providers of video conferencing services and manufacturers of equipment used for VRS who otherwise are covered under the CVAA should be excluded from its requirements simply because their services are a kind of TRS provided pursuant to section 225 of the Act. While VRS equipment and services are specifically designed for people who are deaf or hard of hearing and use sign language, they are not necessarily designed for those who have additional disabilities as well (*e.g.,* individuals who are deaf and have low vision, a mobility, or dexterity disability). We do not believe this interpretation will in any way diminish or change the obligations of VRS providers that are contained in part 64 of the Commission's rules. We seek further comment on this issue and on whether such an interpretation would create any difficulties or conflicts in our implementation of the VRS program.

40. We note that consumers who are deaf or hard of hearing also use video equipment distributed by VRS providers for point-to-point calls with other users of this equipment. We believe that such point-to-point calling also meets the CVAA's statutory definition of "providing * * * real-time video communications, including audio, to

enable users to share information of the user's choosing," and seek comment on this analysis.

41. We also seek further comment on whether webinars are a covered service. TIA states that "a service that enables users to share information necessarily implies a two-way service, not a broadcast-style webinar video." The IT and Telecom RERCs disagree, however, asserting that webinar systems should be subject to Section 716 because these systems are "not designed to broadcast information but rather to provide user interaction in the form of chat, voting, and hand-raising, etc."

42. Next, we seek comment on Consumer Groups' assertion that "the scope of the [CVAA] should not be limited by the type of communication conveyed by the video conferencing service (*i.e.,* uni-, bi-, or multi-directional), but by the fact that the service is capable of providing real-time communications that enable users to share information." Consumer Groups suggest, for example, that the fact that "video conferencing services may be used to leave a 'video mail' (similar to a 'voice mail') message," does not preclude the service's coverage under the CVAA. Consistent with our seeking comment on how to treat multi-purpose devices above we seek comment on Consumer Groups' suggestion. We also seek comment more generally on whether services that otherwise meet the definition of "provid[ing] * * * real-time video communications, including audio, to enable users to share information of the user's choosing" but that also provide non-real-time functions (such as video mail) are covered under the CVAA. If so, are the non-real-time functions or near-real-time functions of such a service (such as video mail) subject to the requirements of section 716? If such functions are not covered, should we, similar to what we did in the section 255 context, assert our ancillary jurisdiction to cover video mail? Specifically, the Commission employed its ancillary jurisdiction to extend the scope of section 255 to both voicemail and interactive menu services under part 7 of the Commission's rules because "the failure to ensure accessibility of voicemail and interactive menu services, and the related equipment that performs these functions, would [have] seriously undermined the accessibility and usability of telecommunications services required by sections 255 and 251(a)(2)." Similarly, we seek comment on whether the exclusion of video mail from our rules governing section 716 would hinder our ability to ensure the accessibility and usability of advanced communications services.

43. TIA also asserts, similar to the argument that it made with respect to the scope of VoIP services covered under the CVAA, that "products that offer a video connection that is incidental to the principal purpose and nature of the end user offering fall outside the definition as well," we believe the same analysis that we propose to apply to the scope of non-interconnected VoIP should apply here. We therefore propose to classify any offering that meets the criteria of the statutory definition set forth above as a "video conferencing service" and note that the statutory definition does not exclude "products that offer a video connection that is incidental to the principal purpose and nature of the end user offering." Again, we note that this issue may be relevant to our waiver authority set forth in section 716(h), or the exclusion of customized equipment or services pursuant to section 716(i). We seek comment on this proposed classification.

ii. Interoperable

44. We seek further comment on the meaning of "interoperable" in the term "interoperable video conferencing service," again noting the symmetries of the definition and interpretation of this term in the various drafts of the CVAA and the legislative history of this law. Commenters appear to be divided on the significance of this term. ITI asserts that the inclusion of the modifier "interoperable" after earlier versions of the legislation did not include the word "strongly suggests that Congress consciously decided to target only a subset of all video conferencing services." TIA urges an interpretation of the word "interoperable" to mean that a video conferencing service must operate "inter-platform, inter-network, and inter-provider" before it is subject to the accessibility provisions of the CVAA. Similarly, CEA concludes that "most nascent two-way video services and applications commercially available in the marketplace have not yet reached true interoperability and are not covered by the statute." However, Consumer Groups believe that "interoperable" should be interpreted to achieve a broad application of the requirements of the CVAA. Similarly, the RERC–IT urges that the inclusion of the word "interoperable" suggests a broad application of the CVAA so that "all video conferencing services are covered and that they should be made interoperable." Other commenters express concerns about the current lack of interoperability of video conferencing services, *i.e.,* that consumers are not able to make point-to-point calls using different video conferencing programs.

45. We are concerned that limiting coverage of this provision to only currently available video conferencing services that are "inter-platform, inter-network, and inter-provider" may undermine the statute's intent to the extent the definition results in little or no video conferencing service or equipment being "interoperable." We note that "video conferencing service" in the legislative history and "interoperable video conferencing service" in the statute have the exact same definitions.

46. We seek comment on how to define "interoperable" in a manner that is faithful to both the statutory language and the broader purposes of the CVAA. Specifically, we seek comment on how the Commission should define interoperable video conferencing services within the scope of covered services to ensure that "such services may, by themselves, be accessibility solutions" and "that individuals with disabilities are able to access and control these services" as Congress intended. For example, which characteristics of video conferencing services and equipment, including software, should determine "interoperability"?

47. The Commission requires VRS services and equipment to be "interoperable" for the provision of VRS under section 225 of the Act. The Commission also requires video conferencing services and equipment used for point-to-point calls between VRS equipment users to be "interoperable" under the authority of ancillary jurisdiction. These interoperability requirements pertain only to VRS providers and equipment used by registered VRS users for VRS and point-to-point communications and do not require interoperability among VRS and other platforms, networks, or providers. We seek comment on whether how we define interoperability in the context of VRS should have any bearing on how we define "interoperable" in the term "interoperable video conferencing service."

5. Customized Equipment or Services

48. Section 716(i) states that the provisions of this section "shall not apply to customized equipment or services that are not offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." While the Senate Report did not discuss this provision, the House Report explains that section 716(i) is a "narrow

exemption" that encompasses "equipment and services [that] are customized to the unique specifications requested by an enterprise customer." It goes on to state that this provision "permit[s] manufacturers and service providers to respond to requests from businesses that require specialized and sometimes innovative equipment to provide their services efficiently" and is "not intended to create an exemption for equipment and services designed for and used by members of the general public."

49. Several other commenters urge us to find that manufacturers and service providers are subject to Section 716 only to the extent that they are offering their equipment and services directly to the public. In contrast, the RERC–IT urges us to "carefully limit the exception for customized equipment and services" and to cover equipment and services that have been customized in "minor ways" and "that are made available to the public indirectly through employers, schools, or other institutions." The RERC–IT also urges that we define "public" in this context to "include public institutions, such as educational institutions and government agencies."

50. We believe that the guidance offered by the House Report evinces Congress's intent that section 716(i) be narrow in scope and applicable only to customized equipment and services offered to business or other enterprise customers, rather than to equipment and services "used by members of the general public." We seek comment on this analysis, as well as on the extent to which the equipment and services used by private institutions but made available to the public, such as communications equipment and services used by libraries and schools, should be covered by the CVAA. More specifically, we seek comment on what additional guidance by the Commission is needed to define equipment and services that are "used by members of the general public." Finally, we seek comment on the extent to which section 716 covers products and services that are offered to the general public, but which have been customized in minor ways to meet the needs of private entities.

51. Consistent with Motorola's assertions, we propose to find section 716's definition of advanced communications services not to extend to public safety communications networks and devices and find that these networks and devices are "equipment and services that are not offered directly to the public." We agree that the Commission's recent proposal not to apply its hearing aid compatibility requirements to public safety equipment is instructive here. We note, however, that employers still have obligations under the ADA, and agree with CSD that "to the extent possible, public safety systems should be designed to accommodate the needs of deaf [and] hard-of-hearing employees and employees with other disabilities." We seek comment on this analysis.

6. Waivers for Services or Equipment Designed for Purposes Other Than Using ACS

52. Section 716(h)(1) of the Act states: The Commission shall have the authority, on its own motion or in response to a petition by a manufacturer or provider of [ACS] or any interested party, to waive the requirements of [section 716] for any feature or function of equipment used to provide or access [ACS], or for any class of such equipment, for any provider of [ACS], or for any class of such services that —(A) is capable of accessing an [ACS]; and (B) is designed for multiple purposes but is designed primarily for purposes other than using [ACS]. We note that, in making waiver decisions, the Commission generally considers whether special circumstances exist that warrant deviation from the general rule, and whether the waiver will serve the public interest. In the October public notice, the Bureaus asked what factors would be relevant to determining whether a product or service is eligible for a waiver and whether there are any specific classes of products or services that warrant the establishment of a categorical or blanket waiver.

53. Both the Senate and House Reports state that section 716(h) "provides the Commission with the flexibility to waive the accessibility requirements for any feature or function of a device that is capable of accessing advanced communications services but is, in the judgment of the Commission, designed primarily for purposes other than accessing advanced communications." Consistent with the statutory language and legislative history, we propose to focus our inquiry on determining whether the offering is designed primarily for purposes other than using ACS.

54. In making our waiver assessment, we agree with commenters that the "core" function of an offering is an issue relevant to our analysis, we also agree with the IT and Telecom RERCs's suggestion that the "primary feature of a multi-feature device or service [may] vary from person to person." Furthermore, we do not believe the fact that a "core" function of a device is to play games to be dispositive of the issue whether such device is entitled to waiver under section 716(h). As the IT and Telecom RERCs note, "[g]aming is used for education, rehabilitation, and social interaction [and] * * * should not be exempted simply because the basic feature is a game." We seek comment on this analysis. We also seek comment on AFB's contentions that "how [a product] is marketed" and "[how] most people think of the device" should not be relevant to our analysis; rather, "[t]he issue is whether the advanced communications features and functions can be operated apart from the device's [primary] functions."

55. ESA also suggests that why consumers access the gaming products is an important consideration: "Consumers do not play an online game, [for example], as a means of accessing chat—a consumer in search of a general purpose messaging service will find simpler, more direct alternatives than navigating through the various features of a gaming device or online game service." We seek comment on this assertion and on whether how consumers actually use the communications component of a multi-purpose device or service is relevant to our assessment of the primary purpose for which a device or service was designed. In addition, we seek comment on ESA's proposal that we consider as part of our waiver determination whether the offering is designed for a "specific class of users who are using the ACS features in support of another task."

56. We also seek comment on the process that we should adopt for determining whether to waive the requirements of section 716 and specifically on the extent to which we need to adopt any procedures to ensure that such process is efficient and effective. Alternatively, we seek comment on whether we should handle waivers as we have in the normal course pursuant to § 1.3 of the Commission's rules. We agree with commenters who state that we should "incorporate protections for confidential information" and propose that parties seeking waivers be able to request confidential treatment of information pursuant to § 0.459 of the Commission's rules. At the same time, we agree with AAPD that, to the extent possible, the process should be "transparent and public," and propose to seek comment on any waiver petition that we receive pursuant to section 716(h). We seek comment on these proposals.

57. We also recognize the need, after appropriate consideration, for making waiver determinations in an "expeditious manner," although we

propose not to "incorporate an automatic grant date for waiver requests" as TIA urges. We note that TIA requests that "if the Commission fails to timely act on a good faith waiver request, the company in question [should] be able to initiate the product or service without penalty, and incorporate accessibility features in a reasonable time frame prospectively." Given that such a "deemed granted" provision is not contemplated by the statute, we do not intend to propose the framework outlined by TIA. We seek comment on this analysis.

58. In addition, in light of the fact that, as the NFB observes, "[t]echnology is ever changing and the 'primary purpose' of multi-purpose products is always evolving," we seek comment on AAPD's assertion that "there should be no permanent waivers." Should waivers be temporary, and, if so, what should the duration of the waivers be? If we decide that waivers should only be temporary, should we establish a process for renewing waivers, and, if so, should the factors we consider for renewal vary from the factors we consider for the original waiver grant?

59. We also seek comment on whether we should consider waivers for a "class" of services or equipment under this section and what specific showing is needed to justify such waivers. Several commenters suggest that we should grant blanket waivers in order to support innovation and competition. For example, Microsoft states that "[g]ranting prospective categorical waivers is essential to encourage manufacturers and service providers to build communication features into services and equipment devices that do not have as their core purpose advanced communications * * * [f]ostering this innovation will enrich the communications choices and solutions available to all consumers, including those with disabilities." In contrast, many consumer commenters suggest that blanket waivers are never appropriate, given rapid technological advancement and the belief that "much accessibility and usability will be accomplished through software and related changes."

60. We seek further comment on the specific factors that we should consider in determining whether a particular "class" of services or equipment should be granted a waiver. How can we determine what services or equipment are similarly situated enough to be designated a "class"? Is it possible to structure a blanket waiver in such a way as to address consumers' concerns that any such waiver could quickly become outdated? Are there specific classes of services or equipment that we should consider waiving in our final rules on section 716? If we do decide to grant waivers for an entire class of services or equipment, should such waivers be permanent or temporary? As discussed above (for individual waivers), should we establish a renewal and/or revocation process for categorical waivers?

7. Exemptions for Small Entities

61. Section 716(h)(2) states that "the Commission may exempt small entities from the requirements of this section." While the Senate Report did not discuss this provision, the House Report notes that under this section, the Commission may "waive the accessibility requirements for certain small businesses and entrepreneurial organizations" because they "may not have the legal, financial, or technical capability to incorporate accessibility features." Otherwise, the Report notes, the "application of these requirements in this limited case may slow the pace of technological innovation." It also states that "the Commission is best suited to evaluate and determine which entities may qualify for this exemption," and that it expects we will consult with the Small Business Administration ("SBA") when defining the small entities to be exempted.

62. NTCA asks the Commission to exercise its authority under section 716(h)(2) to exempt small businesses from section 716 and to define "small businesses," as such term is defined in the Regulatory Flexibility Act, thereby enabling small, rural local exchange carriers ("RLECs") and their affiliates to deploy and offer ACS "without facing outsized or unachievable regulatory burdens." Similarly, Blooston Rural Carriers request that small RLECs, RLEC affiliates, and other similarly situated small entities be exempted under section 716(h)(2) from both section 716, and the related enforcement and recordkeeping requirements of section 717. In the alternative, they request that the Commission adopt "streamlined procedures and simplified criteria" that make "appropriate waivers reasonably available to qualifying entities in a timely, predictable, and economically reasonable manner."

63. Consumer Groups, however, urge that "[i]ndividuals with disabilities should not be denied accessible advanced communications equipment and services simply because they happen to live in underserved or rural areas," and assert that "RLECs can ensure their own compliance with the [CVAA] through contracts with larger providers and mass market vendors * * * who must also comply with the [CVAA]." ACB opposes small entity waivers "without such entities having done due diligence on whether or not product accessibility is 'achievable'* * * [contending] a case-by-case approach to granting waivers would better serve the needs of consumers." Moreover, ACB recommends that, if the Commission grants categorical waivers for small entities, any such waivers only be granted for a year or less, subject to renewal at the Commission's discretion. Similarly, AAPD urges the FCC Commission to utilize caution when reviewing circumstances that would allow small entities an exemption from these requirements. AAPD does not favor "permanent exemptions or waivers."

64. In considering the proper scope of possible exemptions from the provisions of section 716 for small entities, we note that other provisions of that section also recognize the need to consider the circumstances of such entities in applying the accessibility requirements. As discussed in section III.B.1 *infra,* section 716 provides that service providers and manufacturers must meet the accessibility requirements of section 716 "unless [those requirements] are not achievable." Section 716(g) defines "achievable" as "with reasonable effort or expense," and requires the Commission to consider four factors in determining whether meeting a requirement of section 716 is "achievable." Two of those four factors necessarily incorporate consideration of the size and capabilities of an entity: "[t]he technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;" and "[t]he type of operations of the manufacturer or provider."

65. The discretionary authority to exempt one or more groups of small entities in section 716(h)(2) supplements the protections that are built into the section 716(g) achievability analysis with an additional tool to ensure that our rules do not unduly burden such entities. We acknowledge that certain small entities may lack the legal, financial, or technical capability to incorporate the accessibility features required by the CVAA, and that in certain instances this may warrant an exemption from our accessibility requirements for certain small entities that provide ACS as well as some of those small entities that manufacture equipment used for ACS.

We agree with consumers that any such exemptions should be carefully tailored to ensure that individuals with disabilities are not denied access to advanced communications equipment and services in rural and other underserved areas.

66. In light of these competing concerns, we seek comment on whether we should exercise our exemption authority, and if so, how we should structure the exemption. For example, should we base the exemption on the number of employees or the annual revenues of the entity or a combination of the two? Are there other criteria that we should consider? We also seek input on the impact of any exemption that commenters urge us to make. In particular, we request information on the percentage of manufacturers and service providers that would be exempted from our section 716 requirements for any specific criteria proposed. We also seek comment on the percentage of equipment (including software) and services in the ACS marketplace that would be exempted from the requirements of section 716 if we exempted entities based these proposed criteria. In addition, we seek comment on how use of any recommended criteria would affect the availability of ACS and equipment used for ACS, especially in rural and underserved areas. Finally, if we adopt criteria to exempt small entities, should we consider limiting the time period of any exemption that may be granted under these criteria? We also propose to review periodically any basis that we adopt for granting exemptions to small entities to ensure that they reflect the current state of the industry.

B. Nature of Statutory Requirements

1. Achievable Standard

a. General Approach

67. Service providers and manufacturers must meet the accessibility requirements of section 716 "unless [those requirements] are not achievable." Section 716(g) of the Act defines the term "achievable" to mean "with reasonable effort or expense, as determined by the Commission." As noted above, section 716 requires a higher standard of achievement than section 255. Under section 255, covered entities must ensure the accessibility of their products if it is "readily achievable" to do so, which the statute defines by cross reference to the ADA to mean "easily accomplishable and able to be carried out without much difficulty or expense."

68. Specifically, section 716(g) requires the Commission to consider the following factors in making determinations about what "constitutes reasonable effort or expense": (1) The nature and cost of the steps needed to meet the requirements of this [s]ection with respect to the specific equipment or service in question; (2) the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies; (3) the type of operations of the manufacturer or provider; and (4) the extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

69. We seek comment on each of these factors. At the outset, we note that the Senate and House Reports state that we should "weigh each factor equally when making an achievability determination." The House Report also states that in implementing section 716, the Commission should "afford manufacturers and service providers as much flexibility as possible, so long as each does everything that is achievable in accordance with the achievability factors." Consistent with this legislative history, we generally agree with AT&T that an assessment of what is achievable should be "fact-based, flexible, and applied on a case-by-case basis," but also agree with NFB that flexibility should not be so paramount that "accessibility is never achieved." The House Report also states that "the Commission [should] interpret the accessibility requirements in this provision the same way as it did for [s]ection 255, such that if the inclusion of a feature in a product or service results in a fundamental alteration of that service that it is *per se* not achievable to include that function." Accordingly, we agree with commenters who urge us to interpret the achievability requirements consistent with this directive. We seek comment on this analysis.

70. We also seek comment on whether or to what extent we have the discretion to weigh other factors not specified in the statute in making an achievability determination. ITI urges us to do so, and specifically asks us to consider "how the lack of economies of scale and scope can sometimes hinder the development and deployment of accessibility solutions." We note that Congress specifically set forth in section 716 the factors that we must consider in determining whether accessibility is achievable, and directed us to weigh these factors equally. In light of the statute and this legislative history, we propose to only consider the factors enumerated in the statute in making our achievability determinations. We would note, however, that we propose to construe the factors broadly and weigh any relevant considerations in determining their meaning. We believe, for example, that the "lack of economies of scale and scope" could be a relevant consideration in determining the meaning of the second factor, "the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies." We seek comment on this analysis.

b. Specific Factors

(i) Nature and Cost of Steps Needed With Respect to Specific Equipment or Service

71. Section 716(g)(1) of the Act states that in determining whether the statutory requirements are achievable, the Commission must consider "[t]he nature and cost of the steps needed to meet the requirements of [716(g)] with respect to the specific equipment or service in question." The Senate Report requires the Commission to consider "the nature and cost of the steps needed to make the specific equipment or service in question accessible" and states that "[t]he Committee intends for the Commission to consider how such steps, if required, would impact the specific equipment or service in question." The House Report reiterates the need for the Commission to focus on the "specific product or service in question" when conducting this analysis. We believe that it is appropriate for us to consider whether accessibility has been achieved by competing products, but agree with T–Mobile that, in doing so, we must also consider the unique circumstances of each covered entity. We seek comments on this analysis and also seek comment on whether we should define this standard with more specificity in order to make sure that our standards are fully enforceable. We further request input on ACB's suggestion that we consider the totality of the steps that a company needs to take in our achievability analysis, as well as the need to compare the cost of making a product accessible with the organization's entire budget.

(ii) Technical and Economic Impact on the Operation

72. The second factor in determining whether compliance with section 716 is

"achievable" requires the Commission to consider the "technical and economic impact of making a product or service accessible on the operations of the manufacturer or provider, and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies." We seek comment on how we should assess this factor and how our analysis should take into account the development and deployment of new communications technologies.

(iii) Type of Operations

73. The third factor in determining whether compliance with section 716 is "achievable" requires the Commission to consider "[t]he type of operations of the manufacturer or provider." The Senate and House Reports state that this factor permits "the Commission to consider whether the entity offering the product or service has a history of offering advanced communications services or equipment or whether the entity has just begun to do so." We seek comment on the extent to which we should consider an entity's status as a new entrant in the ACS market in conducting our achievability analysis. How should a manufacturer or service provider's recent entry into this market affect our analysis if such entity has significant resources or otherwise appears capable of achieving accessibility? What other criteria should we use in assessing this factor as part of our achievability analysis?

(iv) Extent to Which Offering Has Varied Functions, Features, and Prices

74. The fourth factor in determining whether compliance with section 716 is "achievable" requires the Commission to consider "[t]he extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points." The Senate and House Reports state that "the Commission [should] interpret this factor in a similar manner to the way that it has implemented its hearing aid compatibility rules." The Commission's rules governing hearing aid compatibility ("HAC") obligations for wireless devices require manufacturers and service providers to ensure that a range of phones comply with the HAC standards. Specifically, those rules direct such companies to ensure that hearing aid users are able to select "from a variety of compliant handset models with varying features and prices."

75. Several industry commenters read Congress's directive to incorporate this criteria into the achievability analysis, in conjunction with the legislative history and Section 716(j), as an outright rejection of the finding in the *Section 255 Report and Order* to require covered entities to consider the accessibility of every product. On the other hand, the RERC–IT states that "if every function of a particular device can achievably be made accessible to every disability, every function should be made accessible." We question whether any of these proposed interpretations appropriately take into account the more balanced approach contemplated by Congress, which gives equal weight to each of the four achievability factors and applies them on a flexible, case-by-case basis. We do, however, generally agree with TIA that this factor should be interpreted to "give individuals with disabilities meaningful choices in accessible products, and to reward those companies who provide such choices." While section 716's flexible approach is not amenable to the fixed number or percentage approach the Commission has employed in the HAC context, section 716(g)(4) seems to require that where a company has made a good faith effort to incorporate accessibility features in different products across multiple product lines, this should count favorably toward a determination that the company is in compliance with section 716 for the product in question. Where companies offer a range of accessible products that perform different functions at varied price points, consumers with disabilities will have a range of devices from which to make their purchases. In those instances, so long as other criteria under the achievability analysis are met, a company charged with having an inaccessible product might not have to make that specific product accessible. This approach would appropriately reward companies that make substantial investments in accessible products, while allowing flexibility to account for marketplace realities.

76. Accordingly, we seek comment on whether covered entities generally should not have to consider what is achievable with respect to every product, if the entity offers consumers with the full range of disabilities meaningful choices through a range of accessible products with varying degrees of functionality and features, at differing price points. At the same time, we also seek comment on whether there are some accessibility features that are so important or easy to include (like a "nib" on the 5 key) that they should be deployed on every product, unless it is not achievable to do so. If so, we seek comment on whether we should identify in our rules some of these specific accessibility features that are currently available, to provide clarity on what accessibility features should be universally deployed, if achievable. We further express our general belief that section 716(j), does not preclude our identifying "easy" accessibility features that must be included on every product, if achievable. While the Senate Report did not address this specific provision, our belief is confirmed by the House Report, which states that the Commission's approach to section 255 is consistent with section 716(j). Finally, we seek comment on whether we should define with more specificity the meaning of "varying degrees of functionality and features" and "differing price points." In particular, we seek comment on ACB's assertion that "[i]t is essential that manufacturers and service providers make available a range of devices that fit various price ranges along with corresponding accessible features * * * this may be accomplished by dividing devices into classes and making certain that each class has at least one option that is fully accessible."

2. Industry Flexibility

77. Sections 716(a)(2) and (b)(2) of the Act provide manufacturers and service providers, respectively, flexibility on how to ensure compliance with the accessibility requirements of the CVAA. Specifically, a manufacturer or service provider may comply with these requirements either by building accessibility features into the equipment or service or "by relying on third party applications, peripheral devices, software, hardware, or [CPE] that is available to consumers at nominal cost and that can be accessed by people with disabilities." While the Senate Report did not discuss these provisions, the House Report makes clear that the choice between these two options "rests solely with the provider or manufacturer." We believe that the statutory language and legislative history preclude us from preferring built-in accessibility over third party accessibility solutions, as some consumer commenters urge us to do. We acknowledge the integral role that universal design has played in ensuring that mainstream products and services are accessible to people with disabilities, and we believe that universal design will continue to play an important role in providing accessibility to people with disabilities. We believe, however, that the industry flexibility provisions of the CVAA reflect the fact that there are new ways

to meet the needs of people with disabilities that were not envisioned when Congress passed section 255, which relied primarily on universal design principles. With new and innovative technologies, in some cases, personalized services and products may now be able to more efficiently and effectively meet individual needs than products built to perform in the same way for every person. Sometimes called "auto-personalization," where available, this allows devices to adapt to individual needs based on the user's preferences, according to the device's capabilities. In a growing and increasingly mobile computing environment, for example, consumers may be able to set their preferences so that the interfaces on a device or the content produced by that device automatically become accessible for that individual's disability needs.

78. We do, however, seek comment on what actions we should take to ensure that third party accessibility solutions meet the needs of consumers in a manner comparable to solutions that are built into the equipment. First, we seek comment on the meaning of the requirement that the third party accessibility solutions "must be available to the consumer at nominal cost." Some commenters assert that "nominal cost" cannot be a static definition or constitute a set amount or percentage of total cost, but rather should be determined on a case-by-case basis. In contrast, the RERC–IT, noting that people with disabilities are "poor at alarming rates," urges the Commission to limit "nominal cost" at to one percent (1%) of the total cost of the device or service, or the total cost of the device plus service, as applicable. AFB notes further that ongoing costs to keep third party software and hardware up to date and in good working order should be included, such that the total cost to the consumer cannot be more than nominal. While Congress did not prescribe a percentage or amount, it did intend that any fee for third-party software or hardware accessibility solutions be "small enough so as to generally not be a factor in the consumer's decision to acquire a product or service that the consumer otherwise desires." We propose to adopt this definition of "nominal cost" and seek comment on this proposed definition. We are concerned, however, that this definition, by itself, might not ensure that the cost of accessibility for the consumer is truly nominal, and we seek comment on whether we need to provide further guidance on the issue.

79. We believe that manufacturers and service providers can rely on a range of third party solutions, subject to the requirements that we discuss further below, including the use of third party applications, peripheral devices, software, hardware, and CPE. We propose to adopt the following definitions of these potential third party accessibility solutions:

(a) "Applications" means "computer software designed to perform or to help the user perform a specific task or specific tasks, such as communicating by voice, electronic text messaging, or video conferencing";

(b) "Peripheral devices" means "devices employed in connection with equipment covered by this [proceeding] to translate, enhance, or otherwise transfer advanced communications services into a form accessible to individuals with disabilities";

(c) "Software" means "computer programs, procedures, rules, and related data and documentation that direct the use and operation of a computer or a related device and instruct it to perform a given task or function";

(d) "Hardware" means "a tangible communications device, equipment, or physical component of communications technology, including peripheral devices, such as a smart phone, a laptop computer, a desk top computer, a screen, a keyboard, a speaker, or an amplifier"; and

(e) "Customer premises equipment" means "equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications."

We seek comment on these definitions and whether they are sufficiently inclusive of third party solutions available to manufacturers and service providers.

80. Second, we seek comment on the requirement that individuals with disabilities must be able to "access" the third-party solutions. Specifically, we seek comment on ACB's assertions that the third party solutions (i) "cannot be an after-market sale for which the user must perform additional steps to obtain;" (ii) "must be fully operable by a person with a disability without having to turn to people without disabilities in order to perform setup or maintenance;" and (iii) "must be fully documented and supported." We believe that for covered entities to meet the "access" requirement of this provision, they must ensure that the third party solution not be more burdensome to a consumer than a built-in solution. In that vein, should a service provider or manufacturer relying on third party solutions be responsible for finding and installing the solution, and supporting the solution over the life of the product? We seek comment on this analysis, on what a company must do to achieve such parity with built-in solutions, and on whether it is necessary to require that covered entities bundle the third party solutions with its products in order to meet the requirements of the statute.

3. Accessible to and Usable by

81. Under sections 716(a) and (b) of the Act, covered service providers and equipment manufacturers must make their products "accessible to and usable by" people with disabilities, unless it is not achievable. In this section, we seek comment on the extent to which we should continue to define "accessible to and usable by" as we have for our implementation of section 255, which requires telecommunications service providers and equipment manufacturers to make their products "accessible to and usable by" people with disabilities, if readily achievable.

82. In the *Section 255 Report and Order,* the Commission adopted a definition of "accessible" in § 6.3(a) of the Commission's rules which incorporated the functional definition of this term from the Access Board guidelines and includes various input, control, and mechanical functions, output, display, and control functions. The *Section 255 Report and Order* also adopted a definition of "usable" in § 6.3 that incorporated the Access Board's definition of this term. Specifically, § 6.3(l) provides that usable "mean[s] that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, and technical support functionally equivalent to that provided to individuals without disabilities."

83. We seek comment on whether we should adopt these definitions for purposes of section 716 or whether we should take this opportunity to make changes to these definitions that would apply to both our section 255 of the Communications Act and our section 716 of the CVAA based on the Access Board Draft Guidelines that were released for public comment in March 2010. While we note that there is a great deal of overlap between section 255's definition of "accessible" and the Access Board's proposed updated functional criteria for ICT, there are some differences. To the extent that there are differences between these definitions and criteria, should we work to reconcile those differences? For example, the rules implementing section 255 of the Act address cognitive disabilities whereas the draft ICT guidelines do not; and the draft ICT guidelines address photosensitive seizures, whereas the rules implementing section 255 of the Act do not. In addition, we note that the Access

Board Draft Guidelines on "usability" are broader and more detailed than the rules implementing section 255 of the Act. The Access Board Draft Guidelines, for example, cover training and alternate methods of communication.

4. Disability

84. Section 3(18) of the Act states that the term "disability" has the meaning given such term under section 3 of the ADA. The ADA defines "disability" as with respect to an individual: "(A) A physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment * * *." Our current rules incorporate this definition of disability, and we propose to use that definition in our section 716 rules.

5. Compatibility

85. Under section 716(c) of the Act, whenever accessibility is not achievable either by building in access features or using third party accessibility solutions as set forth in sections 716(a) and (b), a manufacturer or service provider must "ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access," unless that is not achievable. Section 255 of the Act contains a similar compatibility requirement for telecommunications service providers and manufacturers if it is readily achievable to do so, in cases where built-in accessibility is not readily achievable.

86. Our rules implementing section 255 of the Act define peripheral devices to mean "devices employed in connection with equipment covered by this part to translate, enhance or otherwise transform telecommunications into a form accessible to individuals with disabilities." We stated in the *Section 255 Report and Order* that these might include "audio amplifiers, ring signal lights, some TTYs, refreshable Braille translators, [and] text-to-speech synthesizers." Our rules implementing section 255 of the Act define specialized CPE as customer premises equipment that is commonly used by individuals with disabilities to achieve access.

87. For purposes of section 716, we propose to define peripheral devices to mean "devices employed in connection with equipment, including software, covered under this part to translate, enhance, or otherwise transform advanced communications services into a form accessible to individuals with disabilities." This definition is based on our section 255 definition, with some refinements to reflect the statutory language in section 716. We also propose to define specialized CPE, as we do in our rules implementing section 255 of the Act, as "customer premises equipment which is commonly used by individuals with disabilities to achieve access." We agree with the vast majority of commenters that peripheral devices can include mainstream devices and software, as long as they can be used to "translate, enhance, or otherwise transform advanced communications services into a form accessible to individuals with disabilities" and the devices and software are "commonly used by individuals with disabilities to achieve access." As we found in the *Section 255 Report and Order,* we do not believe that it would be feasible for the Commission to maintain a list of peripheral devices and specialized CPE commonly used by individuals with disabilities, given how quickly technology is evolving. For the same reason, we also believe that covered entities do not have a duty to maintain a list of all peripheral devices and specialized CPE used by people with disabilities. We do believe, however, that covered entities have an ongoing duty to consider how to make their products compatible with the software and hardware components and devices that people with disabilities use to achieve access and to include this information in their records required under section 717(a)(5). We seek comment on these proposed definitions.

88. We also seek additional comment on what should be required to ensure compatibility in the context of advanced communications services. Under our rules implementing section 255 of the Act, we use four criteria for determining compatibility: (i) External access to all information and control mechanisms; (ii) existence of a connection point for external audio processing devices; (iii) TTY connectability; and (iv) TTY signal compatibility. We seek comment on whether the four criteria listed above remain relevant in the context of advanced communications services. For example, we understand that a sizeable majority of consumers who previously relied on TTYs for communication are transitioning to more mainstream forms of text and video communications. If we want to encourage an efficient transition, should we phase out the third and fourth criteria as compatibility components in our section 716 rules? Should we phase out the criteria from our rules implementing section 255 of the Act as well? If so, should we ensure that these requirements are phased out only after alternative forms of communication, such as real-time text, are in place?

89. While the Access Board Draft Guidelines address compatibility primarily with content providers in mind, they may still be helpful in defining what "compatible" should mean as we update our accessibility rules. The Access Board Draft Guidelines define compatibility to be the "interaction between assistive technology, other applications, content, and the platform," as well as the preservation of accessibility in alternate formats. We seek further comment on whether and how we should use the Access Board Draft Guidelines to help us define compatibility for purposes of section 716.

90. We also seek comment on whether we should adopt additional criteria for determining compatibility under section 716 and section 255. The Access Board Draft Guidelines note that accessibility programming interfaces ("APIs") enable interoperability with assistive technology. Code Factory explains, for example, that it is better able to develop a screen reader application if "manufacturers and operating system developers develop an Accessibility API, which is essentially a layer between the device user interface and the screen reader that can be used to pull information that must be spoken to the user." The Access Board Draft Guidelines direct platforms, applications, and interactive content to comply with World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA Success Criteria and Conformance Requirements or to comply with specific accessibility criteria in Chapter 4 of the Access Board Draft Guidelines. Are there aspects of the WCAG guidelines or Access Board criteria that we should incorporate into our definition of compatibility? We also seek comment on the status of industry development of APIs and whether incorporating criteria related to APIs into our definition of compatibility could promote the development of APIs.

6. Network Features

91. Under section 716(d) of the Act, "[e]ach provider of advanced communications services has the duty not to install network features, functions, or capabilities that impede accessibility or usability." In the October public notice, the Bureaus sought comment on how this provision compares to a similar provision in section 251(a)(2) of the Act (relating to section 255) and whether the

requirement has a different meaning in the context of advanced communications services networks.

92. We agree with commenters who generally believe that this duty not to impede accessibility is comparable to the duty set forth in section 251(a)(2) of the Act. We propose that our rules should include the requirements set forth in section 716(d), just as our rules implementing section 255 of the Act reflect the language in section 251(a)(2). We also agree with Verizon and AAPD, who stress that section 716(d) applies to a much broader range of providers, and seek comment on how we can best reach out to newly covered entities and ensure that they are aware of their new responsibilities.

93. We note that both the Senate and House Reports state that the obligations imposed by section 716(d) "apply where the accessibility or usability of advanced communications services were incorporated in accordance with recognized industry standards." CTIA states that until the Commission identifies and requires the use of industry-recognized standards, it should "refrain from enforcing these obligations on network providers." We seek comment on CTIA's assertion and on what industry standards currently exist that can be used to incorporate accessibility or usability in advanced communications services. We also seek comment on what, if any, industry standards should be developed to incorporate accessibility or usability in advanced communications services and how these standards should be developed.

94. In addition, we seek comment on assertions by the RERC–IT that our rules should prohibit "passive inaction or setting of options * * * that impede access." We also seek comment on AFB's statement that under this provision "digital rights management or network security features or functions must * * * be installed so as not to impede accessibility." Finally, we seek comment on CTIA's assertion that "any rules seeking to limit the incorporation of any network features or functions recognize the need for covered entities to manage all network traffic, including advanced communications services."

7. Accessibility of Information Content

95. Section 716(e)(1)(B) of the Act states that the Commission's regulations shall "provide that advanced communications services, the equipment used for advanced communications services, and networks used to provide [such services] may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through [such services, equipment or networks]." In the October public notice, the Bureaus sought comment on how this provision should be implemented and the types and nature of information content that should be addressed. We note that the legislative history of the CVAA makes clear that the requirements apply "where the accessibility of such content has been incorporated in accordance with recognized industry standards."

96. We seek further comment on what these standards should be and how they should be developed and reflected in the Commission's rules, subject to the limitation on mandating technical standards in section 716(1)(D). In particular, we seek comment on the RERC–IT proposal that our regulations need to ensure that (i) "the accessibility information (*e.g.,* captions or descriptions) are not stripped off when information is transitioned from one medium to another;" (ii) "parallel and associated media channels are not disconnected or blocked;" and (iii) "consumers * * * have the ability to combine text, video, and audio streaming from different origins." We also seek comment on how we can best ensure that encryption and other security measures do not thwart accessibility, while at the same time ensuring that we "promot[e] network security, reliability, and survivability in broadband networks."

97. We also note that the Access Board Draft Guidelines require content, which includes "information and sensory experience communicated to the user and encoding that defines the structure, presentation, and interactions associated with those elements" to be accessible. The Draft Guidelines provide text, images, sounds, videos, controls, and animations as examples of content and encourage, as a best practice, the maximization of compatibility of content with existing and future technologies, including assistive technology. The Draft Guidelines also require user interfaces and their functions to be accessible. For example, under these Draft Guidelines, advanced communications services, equipment, and networks cannot strip captions that make content accessible to people who are deaf or hard of hearing from content that provides closed captioning. We seek comment on whether all or some of these Draft Guidelines would be appropriate for industry-recognized standards or inclusion in the Commission's rules.

98. Finally, we agree with CEA that, consistent with the legislation's liability limitations, that manufacturers and service providers are not liable for content or embedded accessibility content (such as captioning or video description) that they do not create or control. We seek comment on this assessment.

IV. Implementation Requirements

A. Obligations

99. Section 716(e)(1)(C) of the Act requires the Commission to "determine the obligations * * * of manufacturers, service providers, and providers of applications or services accessed over service provider networks." Below, we seek comment and make proposals relating to the obligations of manufacturers and service providers and ask further questions about the obligations of providers of applications or services accessed over service provider networks.

1. Manufacturers and Service Providers

100. With respect to equipment manufacturers and service providers of ACS, we propose to adopt general obligations that mirror the language of the statute, similar to the approach taken in §§ 6.5 and 7.5 of our rules and section 255 of the Communications Act. Specifically, we propose that the Commission's rules set forth the following "General Obligations":

- With respect to equipment manufactured after the effective date of the regulations, a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, must ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless such requirements are not achievable.
- With respect to services provided after the effective date of the regulations, a provider of advanced communications services must ensure that services offered by such provider in or affecting interstate commerce are accessible to and usable by individuals with disabilities, unless such requirements are not achievable.
- If accessibility is not achievable either by building it in or using third party accessibility solutions, then a manufacturer or service provider shall ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access unless such compatibility is not achievable.
- Providers of advanced communications services shall not

install network features, functions, or capabilities that impede accessibility or usability.

○ Advanced communications services and the equipment and networks used to provide such services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment or networks.

101. In addition, we propose to adopt requirements similar to those in our rules implementing section 255 of the Act regarding product design, development, and evaluation (§§ 6.7 and 7.7); information pass through (§§ 6.9 and 7.9); and information, documentation and training (§§ 6.11 and 7.11), modified to reflect the statutory requirements of section 716. Consistent with the *Section 255 Report and Order,* we find that adoption of the functional approach reflected in such requirements will provide clear guidance to covered entities regarding their obligation to ensure accessibility and usability. Some key requirements of these proposed rules include the following:

○ Manufacturers and service providers must consider performance objectives at the design stage as early and as consistently as possible and must implement such evaluation to the extent that it is achievable.

○ Manufacturers and service providers must identify barriers to accessibility and usability as part of such evaluation.

○ Equipment used for advanced communications services, including end user equipment, network equipment, and software must pass through cross-manufacturer, nonproprietary, industry-standard codes, translation protocols, formats or other information necessary to provide advanced communications services in an accessible format, if achievable. Signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

○ Such information and documentation includes user guides, bills, installation guides for end user devices, and product support communications, in alternate formats, as needed. The requirement to provide access to information also includes ensuring that individuals with disabilities can access, at no extra cost, call centers and customer support regarding both the product generally and the accessibility features of the product.

102. We seek comment on these proposed obligations for equipment manufacturers and service providers of ACS. In particular, we seek comment on whether we should adopt additional obligations or make modifications to our proposals.

2. Providers of Applications or Services Accessed Over Service Provider Networks

103. We also seek comment on what, if any, obligations we should impose on "providers of applications or services accessed over service provider networks." Are there any requirements that we should impose on these providers in order to ensure that the statutory mandates of section 716 are carried out? We also seek comment on the meaning of "accessed over service provider networks." How does this apply to applications and services that are downloaded and then run as either native or web applications on the device? How does this apply to applications and services accessed through cloud computing?

B. Performance Objectives

104. Section 716(e)(1)(A) of the Act provides that in prescribing regulations for this section, the Commission shall "include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities." In the October public notice, the Bureaus sought comment on how to interpret this provision, including the extent to which these objectives should be specific or general. The October public notice also sought comment on the usefulness of the Access Board's March 2010 draft standards and guidelines on section 508 of the Rehabilitation Act.

105. We agree with the broad range of commenters who stress the importance of having performance objectives that would clearly define the outcome needed to be achieved without specifying how these ends should be accomplished. More specifically, we agree with those commenters who suggest that we incorporate into the performance objectives the outcome-oriented definitions of "accessible," "compatibility," and "usable" from §§ 6.3 and 7.3 of the Commission's rules. We propose to adopt these definitions as performance objectives subject to any changes that we make to these definitions as part of this proceeding. We also agree with the IT and Telecom RERCs that "performance standards must * * * be testable, concrete, and enforceable" and seek further comment about how we can accomplish these objectives. We disagree with ITI's suggestion that performance objectives be merely "aspirational."

106. We seek additional comment on whether to adopt more specific performance objectives, and on the procedures and timelines that we should use to develop these objectives. While as a general matter it may be desirable to harmonize the Commission's rules with the Access Board Guidelines after the Access Board finalizes its Guidelines, we seek comment on what parts of the Access Board Draft Guidelines may be useful to us if we develop specific performance objectives in the interim. We also seek comment on AT&T's assertion that "the specific functionalities and standards mandated by section 508 [for government purchases of technology] * * * may not be appropriate in all circumstances for industry wide, mass market application contemplated by section 716." In which instances would the Access Board standards not be appropriate for mass market application? In which areas might they be particularly instructive?

107. We also propose to update our performance objectives, as appropriate, after the Emergency Access Advisory Committee ("EAAC"), which was established pursuant to section 106 of the CVAA, provides its recommendations to the Commission in December 2011. The EAAC, among other things, is considering "what actions are necessary as part of the migration to a national Internet protocol-enabled network to achieve reliable, interoperable communication transmitted over such network that will ensure access to emergency services by individuals with disabilities." We express our general belief that achieving reliable, interoperable communication over IP-enabled networks will have applicability outside the emergency access context and may be relevant to developing performance objectives under section 716 for advanced communications services and equipment used for these services. We note as well that the Access Board Draft Guidelines contain a proposal for real time text requirements for hardware and software whenever real-time voice is supported, further supporting the need to move forward with the recommendation in our National Broadband Plan to consider a standard for reliable and interoperable real-time text any time that VoIP is available and supported.

108. With respect to interoperable video conferencing services, we seek input on what performance objectives or rules need to be established to ensure that, where achievable, interoperable

video conferencing services and equipment are accessible to and usable by, individuals with disabilities, such as individuals who are blind, have a visual impairment, have limited manual dexterity, or who are deaf, hard of hearing, or deaf-blind. We also seek comment on whether and to what extent we have the authority to adopt industry-wide performance objectives that would set objectives for covered entities collectively. We recognize, for example, that no single entity working alone, can ensure that video conferencing services (or other advanced communications services) are interoperable. If we were to interpret section 716 to require interoperability among all video conferencing services, what industry-wide performance objectives are needed to achieve and ensure such interoperability so that consumers are able to make point-to-point calls using different video conferencing services and equipment? We also seek comments on what performance objectives are needed to address concerns expressed by consumers about the general inability of current video conferencing services to connect to VRS in a manner that achieves functional equivalency with conventional voice telephone services. In this regard, Consumer Groups urge that mainstream video conferencing equipment and services be required to "comply with standards, such as requisite resolution and frame-rate, to support real-time video conferencing used for VRS, remote video interpreting, and point-to-point communication." We note that the Access Board Draft Guidelines on section 508 propose that products used to transmit video conversations provide sufficient quality and fluidity for real-time video conversation in which at least one party is using a visual method of communication, such as sign language.

109. It appears that video conferencing equipment now available off-the-shelf to the general public does not match the capabilities of proprietary equipment offered by VRS providers in other ways as well. First, although our VRS rules require ten-digit numbering capability on VRS-provided video equipment—to enable the owners of such equipment to make point-to-point calls to one another—this capability does not presently exist in video conferencing equipment such as off-the-shelf videophones. Consumer Groups urge that the North American Numbering Plan ("NANP") 10-digit telephone number system be "adopted and/or adapted by [mainstream] video conferencing equipment and service providers to make their systems interoperable with other systems and users, including VRS users." Finally, we note, that while not yet universal, Consumer Groups envision multipoint control unit (MCU) capability in video conferencing services when VRS is provided so that all parties to the call can see the VRS communications assistant and each other simultaneously. We therefore seek comment on performance objectives for mainstream interoperable video conferencing services and equipment to address multiple video conferencing needs by people with disabilities, including the need for point-to-point calls where at least one party is using a visual method of communication, such as sign language; for functionally equivalent VRS; for multi-party conferencing via MCUs; for ten-digit numbering (or an alternative means of identifying and contacting one another); for effective emergency access; and for the delivery of video remote interpreting services.

110. We also seek comment on whether industry or the Commission should establish a working group of diverse stakeholders to address the interoperability issues relating to video conferencing services and equipment. If so, should the goals be focused on ensuring interoperability among the largest service providers and equipment manufacturers? How can we ensure that new entrants and software application developers would be fully represented in such a process? We ask commenters to set forth in detail the goals of such a group, which stakeholders should be included, the specific issues that such a working group should consider, and a timeline for completion of its work. We further ask whether such group should be part of the Commission's Consumer Advisory Committee, or be a stand-alone entity. Finally, we seek comment on what industry efforts are ongoing to address interoperability challenges and the degree to which such efforts have been effective.

111. Finally, we note that the comments to the October public notice contain relatively little discussion of "electronic messaging services" and "non-interconnected VoIP services." We seek further comment about the specific accessibility concerns relating to these services and whether we should adopt specific performance objectives to address these concerns. We also seek comment on whether it would be appropriate to establish a working group of diverse stakeholders to provide recommendations related to such performance objectives.

V. Industry Guidance

A. Safe Harbors

112. Section 716(e)(1)(D) of the Act provides that the Commission "shall * * * not mandate technical standards, except that the Commission may adopt technical standards as a safe harbor for such compliance if necessary to facilitate the manufacturers' and service providers' compliance" with the accessibility and compatibility requirements in section 716. In the October public notice, we sought comment on whether we should adopt safe harbor technical standards.

113. The vast majority of commenters oppose establishing technical standards as safe harbors. CTIA and AT&T assert that safe harbors will result in *de facto* standards being imposed that will limit the flexibility of covered entities seeking to provide accessibility. The IT and Telecom RERCs state that the Commission's rules should not include safe harbors because "technology, including accessibility technology, will develop faster than law can keep up." AFB asserts that it is too early in the CVAA's implementation "to make informed judgments * * * about whether and which safe harbors should be available." While ITI supports safe harbors, noting they provide clarity and predictability, it warns against using safe harbors "to establish implicit mandates [that] * * * lock in particular solutions." In light of the concerns raised in the record, we agree with AFB that it is too early in the implementation of the CVAA to make informed judgments about whether safe harbor technical standards should be established. Therefore, we propose not to adopt any technical standards as safe harbors at this time. We seek comment on this proposal.

B. Prospective Guidelines

114. Section 716(e)(2) of the Act requires the Commission to issue prospective guidelines concerning the new accessibility requirements. While the Senate Report did not discuss this provision, the House Report notes that such guidance "makes it easier for industry to gauge what is necessary to fulfill the requirements" by providing industry with "as much certainty as possible regarding how the Commission will determine compliance with any new obligations."

115. We agree with CTIA that the prospective guidelines that we adopt must be clear and understandable and provide service providers and manufacturers as much flexibility as possible, so long as achievable accessibility requirements are satisfied.

We seek comment on a proposal by the RERC–IT, endorsed by ACB, that we use "an approach to the guidelines similar to that used by the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG), which provide mandatory performance-based standards and non-mandatory technology-specific techniques for meeting them." We also seek comment on whether any parts of the Access Board's Draft Guidelines on section 508 of the Rehabilitation Act should be adopted as prospective guidelines. In addition, we seek comment on the process that should be used to develop prospective guidelines and to ensure that a diverse and broadly-based group of stakeholders participate in such an effort. Should the Commission, for example, establish a consumer-industry advisory group to prepare these?

VI. Section 717 Recordkeeping and Enforcement

A. Overview

116. Section 717(a) of the Act requires the Commission to establish new recordkeeping and enforcement procedures for "manufacturers and providers subject to [sections 255, 716, and 718.]" In the October public notice, the Bureaus sought comment on these requirements, including the types of records that should be maintained and the possible enforcement procedures that should be imposed. We will discuss the recordkeeping and enforcement requirements in further detail below, including a proposal to amend the existing rules implementing section 255 of the Act and to add a new rule subpart to implement the requirements of section 717. For purposes of our discussion below, we propose to apply the section 717 requirements to manufacturers of equipment used for telecommunications services, interconnected VoIP, voicemail and interactive menu services subject to section 255 of the Act; manufacturers of equipment used for ACS subject to section 716; and manufacturers of telephones used with public mobile services which include an Internet browser, subject to section 718. We also propose to apply the section 717 requirements to providers of telecommunications services, interconnected VoIP services, voicemail or interactive menu services subject to section 255 of the Act; providers of ACS subject to section 716; and providers of mobile services who arrange for the inclusion of a browser in telephones, subject to section 718. Finally, we reiterate our proposal to subject providers of applications and services that can be used for ACS and that can be accessed (*i.e.,* downloaded or run) by users over other service provider networks to the requirements of section 716 and thus by extension cover them under section 717. We seek comment on these proposals.

B. Recordkeeping

117. Beginning one year after the effective date of regulations promulgated pursuant to section 716(e), each manufacturer and provider subject to sections 255, 716, and 718 must maintain, in the ordinary course of business and for a reasonable period, records of the efforts taken by such manufacturer or provider to implement sections 255, 716, and 718, including: (1) Information about the manufacturer's or provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access. Section 717 also requires an officer of a manufacturer or provider to submit to the Commission an annual certification that records are being kept in accordance with this provision. Section 717 also states that "[a]fter the filing of a formal or informal complaint against a manufacturer or provider, the Commission may request, and shall keep confidential, a copy of the records maintained by such manufacturer or provider pursuant to [this section] that are directly relevant to the equipment or service that is the subject of such complaint." We seek comment on how to implement these statutory requirements and solicit specific input below.

118. Some commenter urge the Commission to refrain from making the recordkeeping requirements overly burdensome, unnecessarily expensive, or repetitive of the information required by existing reports. Motorola notes that it and some covered entities already publicly provide some of the information required by Section 717, including information regarding accessibility features, consultations with individuals with disabilities, and compatibility with third party peripherals submitted in existing Commission reports, such as those required for compliance with our HAC rules. CEA also states that "outreach to individuals with disabilities either directly or indirectly through standards development organizations" should be sufficient to demonstrate a company's compliance with Section 717's requirement to document efforts to consult with individuals with disabilities. Additionally, CEA points out that some of the required information may be reflected in information provided to the clearinghouse that will be established under the CVAA.

119. We note, however, that section 717 requires the Commission to establish uniform recordkeeping and enforcement procedures for entities subject to sections 255, 716, and 718. While some of these records that section 717 requires to be kept and, potentially, produced may be available publicly, in other reports or submissions made to the Commission or Bureau, or in information submitted to a clearinghouse, most of the information required by this section is not required in existing Commission reports and it is not clear to what extent this will be available in public information.

120. While we agree that we should avoid imposing excessive burdens or requiring the same information multiple times, we also seek to ensure that specific and relevant records required by the statute are appropriately maintained by manufacturers and providers. In light of the range of potential complaints that may be filed against covered entities under the CVAA and section 255, we seek comment on how the Commission should effectively implement section 717's recordkeeping requirements without imposing excessive burden or expense on covered entities or requiring multiple submissions of the same records to the Commission.

121. Section 717 appears to give the Commission the discretion to expand the recordkeeping requirements beyond the three categories specifically set forth in subsection (a)(5)(A) to "records of the efforts taken by such manufacturer or provider to implement" these Sections. We seek comment on whether the Commission should require covered entities to maintain and, potentially, produce records to demonstrate their compliance with the provisions of section 255 and similarly structured requirements in section 716. We also seek comment on what constitutes a "reasonable time period" during which covered entities will be required to maintain these records. Should we require covered entities to create and maintain records showing their compliance with the general obligation requirements as well as the requirements of product design, development, and evaluation, information pass through, and information, documentation, and training? For example, should we

require covered entities to create and maintain records demonstrating the process they have used to assess whether it is achievable to make particular products and services accessible and usable by persons with disabilities? What kinds of records would be sufficient to demonstrate such compliance? We also seek comment on whether the Commission should require these or any other types of records to demonstrate covered entities' compliance with section 255.

122. Many comments on the recordkeeping requirement request that the Commission adopt a flexible approach to section 717's recordkeeping requirement that recognizes the differences in size and scope of covered entities and their communications services or manufacturing operations, instead of requiring a specific form of documentation. Verizon recommends that the Alliance for Telecommunications Industry Solutions (ATIS) or a similar organization develop a standard recordkeeping form that could be used to satisfy this requirement. While ATIS, on behalf of AISP.4–HAC, expresses a preference for flexible recordkeeping requirements, ATIS also supports Verizon's suggestion that industry and consumers should work together to develop a mutually agreeable form in the event the Commission decides to adopt a standardized approach. CTIA specifically requests that the Commission allow records to be kept electronically. TIA suggests that the Commission should "provide some non-exclusive guidance concerning the type of information that would be responsive to the statutory recordkeeping criteria" without precluding flexibility in the form in which those records may be kept. We seek comment on these recommendations.

123. We recognize that section 717 applies to a broad range of entities that have widely ranging business models and modes of operation. Therefore, consistent with some commenters' suggestions, we propose that we should not mandate any one form in which records must be kept in order to comply with section 717. We also propose that if a record (that the Commission requires be produced after receipt of a complaint) is not readily available, the covered entity must provide it no later than the date of its response to the complaint. We seek comment on these proposals and on whether there is any reason for the Commission to mandate a standard form of recordkeeping to comply with section 717(a)(5) or to require covered entities to submit publicly available records or those the Commission already has in another report or submission. While we cannot predict what the nature of consumers' complaints will be or provide specific guidance as to what information will be responsive to those complaints, we propose, as discussed more fully below, to require each response to a filed complaint to sufficiently describe how each record submitted is relevant to the complaint and the alleged violation, and how the provided record establishes the covered entity's compliance with the Act. Finally, given that the statute provides that recordkeeping requirements do not take effect until one year after the effective date of regulations promulgated pursuant to section 716(e), we seek comment regarding whether, and if so, in what fashion, the Commission should address this transition period, particularly for the purposes of enforcement.

C. Enforcement

1. Background

124. Section 717 requires the Commission to adopt rules that facilitate the filing of formal and informal complaints that allege a violation of section 255, 716, or 718 and to establish procedures for enforcement actions by the Commission with respect to such violations, within one year of enactment of the law. In this section, we seek comment on specific procedures to implement these requirements and propose rules to consolidate the existing enforcement provisions for section 255 with the newly proposed enforcement rules for alleged violations of sections 716 and 718.

a. Enforcement of Section 255

125. In the rules adopted in the *Section 255 Report and Order,* the Commission provided form and content requirements for informal and formal complaints alleging a violation of section 255, as well as review and disposition procedures. In particular, the Commission established specific elements to be included in any informal complaint alleging a violation of section 255 of the Act as well as the form and content for answers to such complaints. These rules provide that if the Commission determines that an informal complaint has been satisfied based on the defendant's answer, or from other communications with the parties, the Commission may, at its discretion, consider the informal complaint closed, without providing a response to the complainant or defendant. Additionally, the Commission may close the informal complaint if it determines that no further action is necessary based on the complaint and answer, and will then duly inform the complainant and the defendant of the reasons stated above. If, however, the Commission, based on the pleadings, determines that a material and substantial question remains as to a defendant's compliance with the section 255 requirements and the Commission's implementing rules, the Commission may conduct further investigation or proceedings as necessary to determine whether the defendant has violated any legal requirements, as well as whether any remedial actions and/or sanctions are warranted. If the Commission determines that a defendant has failed to comply with section 255 and its implementing rules, the Commission can order such remedial action or sanctions as are authorized by the Act and the rules as it deems appropriate. Aside from its complaint procedures, the Commission may, on its own motion, conduct inquiries and initiate proceedings as necessary to enforce the relevant requirements.

b. Section 717 Enforcement Requirements

126. As discussed above, section 717 requires the Commission within one year after the date of enactment of the CVAA to establish regulations that facilitate the filing of formal and informal complaints that allege a violation of section 255, 716, or 718, and to establish procedures for enforcement actions.

127. Specifically, the CVAA requires the Commission to establish separate and identifiable electronic, telephonic, and physical receptacles for the receipt of complaints filed under section 255, 716 or 718 as well as establish a process for filing and receiving formal or informal complaints. Further, the CVAA requires the Commission to investigate the allegations in an informal complaint and, within 180 days after the date on which such complaint was filed with the Commission, issue an order concluding the investigation and provide an explanation for its conclusion, unless such complaint is resolved before such time. If the Commission determines that a violation has occurred, the Commission may, in the order or in a subsequent order, direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance with requirements of those sections within a reasonable time established by the Commission in its order. If a determination is made that a violation has not occurred, the Commission must provide the basis for

such determination. The statute also provides that before the Commission makes a determination, the party that is the subject of the complaint shall have a reasonable opportunity to respond to such complaint, and may include in its response any factors that are relevant to such determination. Before issuing a final order, the Commission is required to provide the responding party a reasonable opportunity to comment on any proposed remedial action.

2. General Requirements

128. *Pre-Filing Notice.* We seek comment on whether the Commission should require potential complainants to first notify the defendant manufacturer or provider that it intends to file a complaint based on an alleged violation of one or more provisions of section 255, 716, or 718. We note that some parties have suggested that such a pre-filing notice can potentially foster greater communication among parties. While we agree that such a requirement could lead to a more efficient resolution in advance of a complaint in some instances, we are also concerned that in other cases, such a requirement could prove burdensome to consumers and delay resolution of complaints. In the *Section 255 Report and Order,* consistent with an Access Board recommendation, we encouraged consumers to express their concerns informally to the manufacturer or service provider before filing a complaint with the Commission. We declined, however, to adopt a rule requiring consumers to contact manufacturers and service providers before they could file a complaint with the Commission, finding that our informal complaint process is "geared toward cooperative efforts." We seek comment on whether such an approach is sufficient or whether a specific requirement is necessary. To the extent that commenters advocate that we require that consumers notify manufacturers or providers before they file a complaint, we seek comment on specific safeguards that we should adopt to ensure that this requirement does not prove onerous to the consumers.

129. *Receipt and Filing of Complaints.* We seek comment on how the Commission should establish separate and identifiable electronic, telephonic, and physical receptacles for the receipt of complaints, both formal and informal. We note that the Commission's Disability Rights Office has already established a new phone number (202–418–2517(V); (202–418–2922 (TTY) and e-mail address (*dro@fcc.gov*) for this purpose. We also note that currently, informal complaints alleging a violation of section 255 may be transmitted to the Commission via any reasonable means, *e.g.,* letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille. We propose to retain these vehicles as means for transmission and receipt of informal complaints by the Commission under sections 255, 716 and 718 and ask commenters to consider whether additional methods are necessary to meet this statutory requirement. Similarly, as discussed more fully below, we seek comment on the extent to which we should retain or revise our current requirements under section 255 governing formal complaints that are filed for alleged violations by manufacturers and providers under sections 255, as well as sections 716 and 718, in the future. At present, these procedures are consistent with §§ 1.720–1.736 of the Commission's rules. If we make changes to facilitate the filing of informal complaints, but continue to apply our procedures for formal complaints largely in their current form to the new ACS sections (as well as maintain these procedures for section 255), will this be enough to fulfill Congress's intent to facilitate the filing of complaints under these sections? We note that since our rules implementing section 255 of the Act went into effect in 1999, the Commission has received only three formal complaints alleging violations of that section.

130. *Standing to File.* We received comments requesting that the Commission establish "reasonable" standing requirements. We note that the CVAA allows "any person alleging a violation" of the CVAA or the implementing rules to file a formal or informal complaint under section 255, 716, or 718. Given that there is no standing requirement under these sections, and there is no standing requirement under either section 208 of the Act and our existing complaint rules, we decline to propose a standing requirement and believe the minimum content requirements we propose *infra* in sections VI.C.3 and VI.C.4 will effectively deter frivolous complaint filings.

131. *Sua sponte actions by the Commission.* As noted above, the Commission's implementing rules for section 255 explicitly state that the agency may, on its own motion, conduct inquiries and proceedings as necessary to enforce the requirements of its implementing rules and that section of the Act. We intend for the Commission and its staff to continue to investigate and take action on our own motion when compliance issues or problems involving sections 255, 716 and 718 come to our attention through an accessibility-related complaint or otherwise. Rather than establishing specific guidelines for initiating investigations and other enforcement actions on the Commission's own motion, we propose to continue to follow existing protocols, and use procedures that in the opinion of the Commission best serve the purposes of Commission- and staff-initiated inquiries and proceedings. We seek comment on this approach.

132. *Remedies and Sanctions.* We seek comment on what remedies and other sanctions the Commission should consider for violations found to have occurred under section 255, 716 or 718. As a preliminary matter, as noted above, we observe that section 717(a)(3)(B) specifically authorizes the Commission to impose as a remedy for any violation an order directing a manufacturer to bring the next generation of its equipment or device, and a service provider to bring its service, into compliance within a reasonable period of time. We also observe that section 718(c) envisions that we will continue to use our existing enforcement authority under section 503 of the Act, but specifically adds that (subject to section 503(b)(5)) manufacturers and service providers subject to the requirements of sections 255, 716, and 718 are liable for forfeitures of up to $100,000 per violation or each day of a continuing violation, with the maximum amount for a continuing violation set at $1 million. We intend to use these statutorily directed remedies and sanctions as well as other remedies and sanctions authorized in the Act. We propose a change to section 1.80 of the Commission's rules to reflect the modifications of section 718(c) to the Act.

133. We seek comment on whether there are additional remedies that the Commission should consider when a violation is determined to have occurred. The Senate and House Reports make clear that we should not consider remedies that require retrofitting of equipment, and accordingly, we agree with CEA that we should not employ those remedies for violations of these provisions. We also note that AFB suggests that when a complaint is filed and a given product is not accessible, but the company nevertheless offers an array of accessible options, "the Commission should require the company to demonstrate that it can offer the complainant at least one other of its products that satisfies the [CVAA's] requirements and that would provide the complainant at least the same

features and level of functionality as the product that is the subject of the complaint" and at a comparable cost to the inaccessible product. While we agree that this may be a potential defense, we clarify that the issue of whether a subject entity satisfies its accessibility obligations is a fact-specific determination that will be decided in the context of a complaint proceeding based on the record. More specifically, we believe our determination about what is achievable must take into account all four factors enumerated under section 716(g), not just the fourth factor that considers "the extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points."

3. Informal Complaints

134. As described above, within one year after the date of enactment of the CVAA, the Commission is required to establish regulations that facilitate the filing of an informal complaint that alleges a violation of section 255, 716 or 718, as well as establish procedures for enforcement actions by the Commission for any violations.

135. We note that commenters suggest that any enforcement procedures should provide clarity regarding culpability, given that a product or service may potentially involve several different entities such as a device manufacturer, a broadband provider, or an application developer. We acknowledge that it may be difficult for a consumer to determine where the responsibility of one covered entity ends and another begins. We seek comment on what additional procedures the Commission might adopt to clarify which entity is "culpable" for noncompliance and further ask to what extent the Commission should be available to assist consumers in determining which entities are appropriately targeted by specific complaints? We also seek comment on what additional elements should be included in complaints that are filed under these sections, beyond what is proposed below.

136. We propose the following minimum requirements that complainants should include in their informal complaints, which are consistent with section 255 requirements as well as existing enforcement rules that have been adopted in other contexts. Specifically, we propose to include the following in any informal complaint: (1) The name, address, e-mail address and telephone number of the complainant, and the manufacturer or service provider defendant against whom the complaint is made; (2) a complete statement of facts explaining why the complainant contends that the defendant manufacturer or provider is in violation of section 255, 716 or 718, including details regarding the service or equipment and the relief requested, and all documentation that supports the complainant's contention; (3) the date or dates on which the complainant or person on whose behalf the complaint is being filed either purchased, acquired, or used (or attempted to purchase, acquire, or use) the equipment or service about which the complaint is being made; (4) the complainant's preferred format or method of response to the complaint by the Commission and defendant (*e.g.,* letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, Braille; or some other method that will best accommodate the complainant's disability); and (5) any other information that is required by the Commission's accessibility complaint form. We seek comment on this proposal and request parties to consider what additional or modified requirements are necessary. Complaints that do not satisfy the pleading requirements will be dismissed without prejudice to refile. (The CVAA requirement for the Commission to issue an order concluding an investigation that is triggered by informal complaint, within 180 days of the filing complaint, will be tied to the Commission's receipt of complaint that satisfies its pleading requirements.)

137. We also recognize that the CVAA's recordkeeping requirements will allow the Commission to obtain records of the efforts taken by manufacturers or providers to implement sections 255, 716, and 718 and the Commission may use these records as necessary to determine whether a covered entity has complied with its legal obligations. Additionally, consistent with our rules implementing section 255 of the Act, we propose to maintain our current rule that the Commission will promptly forward any informal complaint meeting the appropriate filing requirements to each defendant named or determined to be implicated by the complaint. Also, consistent with our approach taken in our rules implementing section 255 of the Act, we propose to require manufacturers and service providers to establish points of contact for complaints and inquiries under section 255, 716 or 718. We continue to believe that this requirement will facilitate the ability of consumers to contact manufacturers and service providers directly about accessibility issues or concerns and ensure prompt and effective service of complaints on defendant manufacturers and service providers by Commission staff. We seek comment on this proposal.

138. As discussed above, the CVAA provides a party that is the subject of a complaint a reasonable opportunity to respond to such a complaint. Consistent with this requirement, we propose that answers to informal complaints must: (1) Be filed with the Commission and served on the complainant within twenty days of service of the complaint, unless the Commission or its staff specifies another time period; (2) respond specifically to each material allegation in the complaint; (3) set forth the steps taken by the manufacturer or service provider to make the product or service accessible and usable; (4) set forth the procedures and processes used by the manufacturer or service provider to evaluate whether it was achievable to make the product or service accessible and usable; (5) set forth the names, titles, and responsibilities of each decisionmaker in the evaluation process; (6) set forth the manufacturer's basis for determining that it was not achievable to make the product or service accessible and usable; (7) provide all documents supporting the manufacturer's or service provider's conclusion that it was not achievable to make the product or service accessible and usable; (8) include a certification by an officer of the manufacturer or service provider that it was not achievable to make the product or service accessible and usable; (9) set forth any claimed defenses; (10) set forth any remedial actions already taken or proposed alternative relief without any prejudice to any denials or defenses raised; (11) provide any other information or materials specified by the Commission as relevant to its consideration of the complaint; and (12) be prepared or formatted in the manner requested by the Commission and the complainant, unless otherwise permitted by the Commission for good cause shown. We seek comment on this proposal. We further propose that within ten (10) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply, which shall be responsive to matters contained in the answer and shall not contain new matters. We seek comment on this proposal as well. Given the statutory requirement for the Commission to issue an order concluding an investigation of an

informal complaint within 180 days of the filing of the complaint, are there other pleading requirements we should impose, and, if so, what should these be?

139. As noted above, the CVAA requires the Commission to issue an order that finds whether a violation has occurred within the time limits required by the Act, and to provide an explanation for its conclusion. Also, as we have noted, the statute provides that if the Commission determines that a violation has occurred, the Commission may direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance with requirements of those sections within a reasonable time established by the Commission in its order. In addition, as also previously mentioned, before issuing a final order, the Commission is required to provide the responding party a reasonable opportunity to comment on any proposed remedial action. We would further note that the CVAA authorizes the Commission to direct manufacturers and service providers of ACS to bring their equipment and services into compliance either in the order concluding an investigation based on an informal complaint or "in a subsequent order." Recognizing the importance of the rapid implementation of remedies to achieving the CVAA's broader goals, however, we will endeavor to issue a determination regarding remedies within 180 days after an informal complaint is filed, or shortly thereafter in a subsequent order, whenever feasible. (The Commission must, however, conclude the investigation and include a determination whether any violation occurred within 180 days.) We seek comment on this approach.

140. We recognize that the Commission must exercise any remedial authority selectively and carefully, based on legislative history, particularly for consumer and wireless devices, clarifying that "the Commission shall provide [service providers and manufacturers] a reasonable time to bring the service or equipment at issue into compliance * * * [and should not] require retrofitting of such equipment that is already in the market." We seek comment on what we should consider a reasonable time in which to bring inaccessible devices or services into compliance and how best to impose compliance in this context consistent with our proposals for remedies and sanctions discussed above. We also seek input on what constitutes "reasonable opportunity" to comment on any proposed remedial action.

4. Formal Complaints

141. *Applicability of sections 1.720–1.736.* In addition to allowing aggrieved parties an opportunity to file informal complaints, section 717 states that such parties may use our more formal adjudicative procedures to pursue accessibility claims against manufacturers or service providers under sections 255, 716 and 718. This section further directs the Commission to establish regulations that facilitate the filing of such formal claims. To date, section 255 claims have been subject to the procedures laid out in §§ 1.720–1.736 of the Commission's rules. Under these rules, both complainants and defendants are required to (1) certify in their respective complaints and answers that they attempted in good faith to settle the dispute before the complaint was filed with the Commission; and (2) submit detailed, factual and legal support, accompanied by affidavits and documentation, for their respective positions in the initial complaint and answer. The rules also place strict limits on the availability of discovery and subsequent pleading opportunities to present and defend against claims of misconduct. Additionally, the rules include additional procedural and pleading requirements designed to expedite resolution of any formal complaint. We propose to require aggrieved parties to follow our existing formal complaint procedures, as modified in our proposed rules. These modifications include deleting references to provisions that are not relevant to consumer-filed complaints in the accessibility context (*e.g.,* provisions relating to complaints filed under section 271 of the Act), as well as to "rocket docket" procedures. Because the CVAA requires the Commission to address informal complaints within 180 days of filing, and because our accelerated docket procedures were designed to adjudicate disputes between carriers that satisfy certain criteria, we are inclined not to extend these procedures to formal complaints in the accessibility context. We seek comment on whether we should consider additional modifications to these rules in order to facilitate the filing of such formal complaints.

142. Additionally, we propose not to require parties to obtain Commission approval in order to file a formal complaint; we also propose not to require parties to invoke our informal complaint processes as a prerequisite to filing a formal complaint. No such requirements exist in the statute or our formal complaint rules and we find no basis in the existing record to conclude that such requirements are needed for complaints filed under section 255, 716 or 718. We seek comment on this proposal and ask parties to describe whether there are any circumstances that warrant such requirements.

VII. Section 718 Internet Browsers Built Into Telephones Used With Public Mobile Services

143. We seek further comment on the upcoming obligations imposed by section 718 which generally provides that "[i]f a manufacturer of a telephone used with public mobile services * * * includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable."

144. While section 718's requirements will not take effect for three years, we agree with ACB that the accessibility of mobile Web access technologies is critical and seek comment on the best way(s) to implement section 718, so as to afford affected manufacturers and service providers an opportunity to provide input at the outset, as well as to make the necessary arrangements to achieve compliance by the time the provisions go into effect. We would particularly welcome input on how the Commission can best inform and assist covered entities on the means by which they can meet their obligation to provide access to Internet browsers in mobile phones. Specifically, we seek comment on Verizon's proposal that we "encourage industry forums and working groups to develop accessibility standards for mobile browsers" because a "cooperative effort" will be needed to ensure compliance. To what extent should the Commission help to facilitate this discussion, for example through an advisory committee or a working group that is part of the Commission's Consumer Advisory Committee? We also seek comment on Code Factory's recommendation that manufacturers and operating system developers develop an accessibility API to foster the incorporation of screen readers into mobile platforms across different phones which would render the Web browser and other mobile phone functions accessible to individuals who are blind or visually impaired.

VIII. Procedural Matters

Comment Period and Procedures

145. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing system (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- *For ECFS filers,* if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Comments shall be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- *Paper filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 pm All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).
- *Availability of Documents:* The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov.* Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 1–800–378–3160.

Initial Regulatory Flexibility Analysis

146. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities that might result from adoption of the rules proposed in the Notice of Proposed Rulemaking ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the applicable deadlines for initial comments, or reply comments, as specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA"). In addition, the NPRM and this IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

147. The purpose of these proposed rules is to implement Congress' mandate that people with disabilities have access to advanced communications services and equipment. Specifically, these rules are proposed to implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the "Twenty-First Century Communications and Video Accessibility Act of 2010" ("CVAA"). Given the fundamental role that advanced communications services have come to play in today's world, the Commission believes that the CVAA represents the most significant governmental action for people with disabilities since the passage of the Americans with Disabilities Act of 1990 ("ADA"). The inability to access communications equipment and services can be life-threatening in emergency situations, can severely limit educational and employment opportunities, and can otherwise interfere with full participation in business, family, social, and other activities. Many of these proposals build on our rules implementing section 255 of the Communications Act, which was added by the Telecommunications Act of 1996 and provides for the accessibility of telecommunications services and equipment.

148. The NPRM makes proposals to implement the requirements of section 716, which requires that providers of advanced communications services and manufacturers of equipment used for such services make their products accessible to people with disabilities, unless it is not achievable to do so. It also proposes rules relating to section 717, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to section 716 and section 255.

149. The Commission proposes that manufacturers and service providers comply with the requirements of section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions. The Commission also proposes that if it is not achievable for manufacturers and service providers to make their products accessible to people with disabilities, then they must make their products compatible with specialized devices commonly used by people with disabilities.

150. Furthermore, the Commission proposes that manufacturers and service providers consider performance objectives at the design stage as early and consistently as possible and implement such evaluation to the extent that it is achievable. The Commission proposes to incorporate into its

performance objectives the outcome-oriented definitions of "accessible," "compatibility," and "usable" contained in its rules regarding the accessibility of telecommunications services and equipment. It seeks comment on whether it should adopt more specific performance objectives and the procedures and timelines that it should use to develop these objectives.

151. The Commission also proposes to issue prospective guidelines concerning the new accessibility requirements. In addition, the Commission seeks comment on its proposal not to adopt any technical standards as safe harbors at this time.

152. The Commission proposes that the accessibility requirements generally should apply to a wide range of manufacturers and service providers, including applications developers and providers of applications or services downloaded and run by users over service providers' networks. It proposes, however, to consider exemptions for small entities and, if one or more such exemptions is adopted, further proposes to consider various criteria in setting standards for such exemptions. The Commission also proposes to consider waivers, both individual and blanket, for offerings which are designed for multiple purposes but are designed primarily for purposes other than using advanced communications services.

153. The Commission proposes to define "achievable" to mean "with reasonable effort and expense." In making determination about what is achievable under section 716, the Commission proposes to consider the following four factors and give them equal weight:

- "The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;"
- "The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question * * *;"
- "The type of operations of the manufacturer or provider;" and
- "The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points."

154. The Commission proposes procedures to facilitate the filing of complaints and proposes a 180-day deadline to issue an order resolving informal complaints concerning the accessibility of products. In addition, the Commission proposes that manufacturers and providers subject to section 716 and section 255 maintain records of the (1) efforts to consult with people with disabilities; (2) accessibility features of their products; and (3) compatibility of their products with specialized devices.

155. Moreover, in light of the range of potential complaints that may be filed against covered entities (including small entities) under the CVAA and section 255, the NPRM seeks comment on how we should effectively implement section 717's recordkeeping requirements without imposing excessive burden or expense on covered entities or requiring multiple submissions of the same records to the Commission. The NPRM seeks input on what constitutes a "reasonable time period" during which covered entities will be required to maintain these records.

156. The NPRM also recognizes the variety of business models and operations of entities covered under its proposed rules and, therefore, proposes that the Commission not mandate any one form in which records must be kept in order to comply with section 717. The NPRM, however, seeks comment on whether there is any reason for the Commission to mandate a standard form of recordkeeping to comply with section 717(a)(5) or to require covered entities to submit publicly available records or to re-submit records that the Commission already has received through a separate submission. Finally, given that the statute provides that these mandatory recordkeeping requirements do not take effect until one year after the effective date of regulations promulgated by the Commission pursuant to section 716(e), the NPRM seeks input regarding whether, and if so, in what fashion, the Commission should address this transition period, particularly for the purposes of enforcement.

B. Legal Basis

157. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, 718 of the Communications Act of 1934, as Amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, 619.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

158. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that face possible significant economic impact by the adoption of proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

159. To assist the Commission in analyzing the total number of small entities potentially affected by the rules proposed in the NPRM, we ask commenters to estimate the number of small entities that may be affected by those rules. To assist in assessing the nature and number of small entities that face possible significant economic impact by adoption of our proposed rules, we seek comment on the industry categories below and our estimates of the entities in each category that can, under relevant SBA standards or standards previously approved by the SBA for small businesses, be classified as small. Where a commenter proposes an exemption from the requirements of section 716, we also seek estimates from that commenter on the number of small entities in each category that would be exempted from compliance with section 716 under the proposed exemption, the percentage of market share for the service or product that would be exempted, and the economic impact, if any, on those entities that are not covered by the proposed exemption. While the NPRM and this IRFA seek comment on whether and how the Commission should exempt small entities from the requirements of section 716 for the purposes of building a record on that issue, we will assume, for the narrow purpose of including a thorough regulatory impact analysis in this IRFA, that no such exemptions will be provided.

160. We divide the remainder of this section into three parts. In the first two, we identify those equipment manufacturers and those service providers that will be subject to our proposed rules and the industry categories within which they are classified. Within each category where possible, we estimate the total number of establishments or firms and the number of small entities (or the percentage) among them that face possible significant economic impact under the rules proposed in the NPRM. Where possible, we provide Census data on the number of "firms" in a given industrial category but, where that data is not available, we provide data on the number of "establishments." The number of "establishments" is a less

helpful indicator of the number of businesses in a given category than the number of "firms," because the latter term takes into account the concept of common ownership or control. Each single physical location counts as an "establishment," even though several "establishments" may be owned or controlled by one "firm." Thus, the data given in a category for "establishments" may reflect an inflated number of businesses in that category, including an inflated number of small businesses. In the third part, we identify additional industry categories in which small entities face possible significant economic impact by the adoption of those proposed rules. In the third part, as in the first two parts, we estimate, where possible, the number of establishments or firms and the number of small entities (or the percentages) that would face such possible impact by adoption of our proposed rules.

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

1. Equipment Manufacturers

a. Manufacturers of Equipment To Provide VoIP

162. Entities manufacturing equipment used to provide interconnected Voice Over Internet Protocol ("VoIP"), non-interconnected VoIP, or both are generally found in one of two Census Bureau categories, "Electronic Computer Manufacturing" or "Telephone Apparatus Manufacturing." While we recognize, as noted in the NPRM, that the manufacturers of equipment used to provide interconnected VoIP will continue to be regulated under section 255 rather than under section 716, we include here an analysis of the possible significant economic impact of our proposed rules on manufacturers of equipment used to provide both interconnected and non-interconnected VoIP because it was not possible to separate available data on these two manufacturing categories for VoIP equipment. In light of this situation, our estimates below are in all likelihood overstating the number of small entities that manufacture equipment used to provide interconnected VoIP and which are subject to our proposed section 716 rules. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as we can at this time, with the understanding that we will modify our analysis as more accurate data becomes available in this proceeding.

163. *Electronic Computer Manufacturing.* The Census Bureau defines this category to include "* * * establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid * * * The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product."

164. In this category, the SBA has deemed an electronic computer manufacturing business to be small if it has fewer than 1,000 employees. For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 421 such establishments that operated that year. Of those 421 establishments, 384 (approximately 91%) had fewer than 100 employees and only 37 had 100 employees or more, thus, while we cannot provide a more precise estimate, it is clear that a great majority of these establishments would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, we estimate that approximately 91% or more of the manufacturers of equipment used to provide VoIP in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

165. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category to comprise "* * * establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways."

166. In this category, the SBA has deemed a telephone apparatus manufacturing business to be small if it has fewer than 1,000 employees. For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 398 such establishments that operated that year. Of those 398 establishments, 393 (approximately 99%) had fewer than 1,000 employees and, thus, would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, the Commission continues to estimate that approximately 99% or more of the manufacturers of equipment used to provide VoIP in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

b. Manufacturers of Equipment To Provide Electronic Messaging

167. Entities that manufacture equipment (other than software) used to provide electronic messaging services are generally found in one of three Census Bureau categories: "Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," "Electronic Computer Manufacturing," or "Telephone Apparatus Manufacturing."

168. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: "transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."

169. In this category, the SBA has deemed a business manufacturing radio and television broadcasting equipment, wireless communications equipment, or both, to be small if it has fewer than 750 employees. For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 398 such establishments that operated that year. Of those 398 establishments, 393 (approximately 99%) had fewer than 1,000 employees and 912 (approximately 97%) had fewer than 500 employees. Between these two figures, the Commission estimates that about 915 establishments (approximately 97%) had fewer than 750 employees and, thus, would be considered small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 97% or more of the

manufacturers of equipment used to provide electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

170. *Electronic Computer Manufacturing.* The Census Bureau defines this category, as noted above, to include "* * * establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid * * * The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product."

171. In this category, as noted above, the SBA has deemed an electronic computer manufacturing business to be small if it has fewer than 1,000 employees. For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 421 such establishments that operated that year. Of those 421 establishments, 384 (approximately 91%) had fewer than 100 employees and 37 had 100 employees or more, thus, while we cannot provide a more precise estimate, it is clear that a great majority of these establishments would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, we estimate that approximately 91% or more of the manufacturers of equipment used to provide electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

172. *Telephone Apparatus Manufacturing.* The Census Bureau, as noted above, defines this category to comprise "* * * establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways."

173. In this category, as noted above, the SBA has deemed a telephone apparatus manufacturing business to be small if it has fewer than 1,000 employees. For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 398 such establishments that operated that year. Of those 398 establishments, 393 (approximately 99%) had fewer than 1,000 employees and, thus, would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, the Commission estimates that approximately 99% or more of the manufacturers of equipment used to provide electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

c. Manufacturers of Equipment To Provide Interoperable Video Conferencing Services

174. Entities that manufacture equipment used to provide interoperable and other video conferencing services are generally found in the Census Bureau category: "Other Communications Equipment Manufacturing." The Census Bureau defines this category to include: "* * * establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)."

175. *Other Communications Equipment Manufacturing.* In this category, the SBA has deemed a business manufacturing other communications equipment to be small if it has fewer than 750 employees. For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 452 such establishments that operated that year. Of those 452 establishments, all 452 (100%) had fewer than 1,000 employees and 448 of those 452 (approximately 99%) had fewer than 500 employees. Between these two figures, the Commission estimates that about 450 establishments (approximately 99.6%) had fewer than 750 employees and, thus, would be considered small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 99.6% or more of the manufacturers of equipment used to provide interoperable and other video conferencing services are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

d. Manufacturers of Software

176. Entities that publish software used to provide interconnected VoIP, non-interconnected VoIP, electronic messaging services, or interoperable video conferencing services are found in the Census Bureau category "Software Publishers."

177. *Software Publishers.* The Census Bureau defines this category to include "* * * establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only."

178. In this category, the SBA has deemed a publisher of software (or manufacturer of software under the CVAA) to be small if it has $25 million or less in average annual receipts. For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 5,313 such firms that operated that year. Of those 5,313 firms, 4,956 (approximately 93%) had $25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 93% or more of the manufacturers of software used to provide interconnected VoIP, non-interconnected VoIP, electronic messaging services, and interoperable video conferencing services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

2. Service Providers

a. Providers of VoIP

179. Entities that provide interconnected or non-interconnected VoIP or both are generally found in one of two Census Bureau categories, "Wired Telecommunications Carriers" or "All Other Telecommunications."

180. *Wired Telecommunications Carriers.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and

infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."

181. In this category, the SBA has deemed a wired telecommunications carrier to be small if it has fewer than 1,500 employees. For this category of carriers, Census data for 2007, which supersede similar data from the 2002 Census, shows 3,188 firms in this category. Of these 3,188 firms, only 44 (approximately 1%) had 1,000 or more employees. While we could not find precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 3,188 firms with fewer than 1,000 employees would be in that group. Thus, at least 3,144 of these 3,188 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 3,144 (approximately 99%) had fewer than 1,500 employees and thus, would be considered small under the applicable SBA size standard. On this basis, the Commission estimates that approximately 99% or more of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM. Our estimates of the number of providers on non-interconnected VoIP (and the number of small entities within that group) are in all likelihood overstated because we could not draw in the data a distinction between such providers and those who provide interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as we can at this time, with the understanding that we will modify our analysis as more accurate data becomes available in this proceeding.

182. *All Other Telecommunications.* Under the 2007 U.S. Census definition of firms included in the category "All Other Telecommunications (NAICS Code 517919)" comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry."

183. In this category, the SBA has deemed a provider of "all other telecommunications" services to be small if it has $25 million or less in average annual receipts. For this category of service providers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 2,383 such firms that operated that year. Of those 2,383 firms, 2,346 (approximately 98%) had $25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 98% or more of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM. As stated above, our estimates of the number of providers of non-interconnected VoIP (and the number of small entities within that group) are in all likelihood overstated because we could not draw in the data a distinction between such providers and those who provide interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as we can at this time, with the understanding that we will modify our analysis as more accurate data becomes available in this proceeding.

b. Providers of Electronic Messaging Services

184. Entities that provide electronic messaging services are generally found in one of the following Census Bureau categories, "Wireless Telecommunications Carriers (except Satellites)," "Wired Telecommunications," or "Internet Publishing and Broadcasting and Web Search Portals."

185. *Wireless Telecommunications Carriers (except Satellites).* The Census Bureau defines this category to include "* * * establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services."

186. In this category, the SBA has deemed a wireless telecommunications carrier to be small if it has fewer than 1,500 employees. For this category of carriers, Census data for 2007, which supersede similar data from the 2002 Census, shows 1,383 firms in this category. Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees. While there is no precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 1,368 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard. On this basis, Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

187. *Wired Telecommunications Carriers.* For the 2007 U.S. Census definition of firms included in the category, "Wired Telecommunications Carriers (NAICS Code 517110)," see paragraph 35 above.

188. In this category, the SBA has deemed a wired telecommunications carrier to be small if it has fewer than 1,500 employees. For this category of carriers, Census data for 2007, which supersede similar data from the 2002 Census, shows 3,188 firms in this category. Of these 3,188 firms, only 44 (approximately 1%) had 1,000 or more employees. While we could not find precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 3,188 firms with fewer than 1,000 employees would be in that group. Thus, at least 3,144 of these 3,188 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the

Commission estimates that of these 3,188 at least 3,144 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard. On this basis, the Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

189. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category to include "* * * establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users."

190. In this category, the SBA has deemed an Internet publisher or Internet broadcaster or the provider of a Web search portal on the Internet to be small if it has fewer than 500 employees. For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 2,705 such firms that operated that year. Of those 2,705 firms, 2,682 (approximately 99%) had fewer than 500 employees and, thus, would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

c. Providers of Interoperable Video Conferencing Services

191. Entities that provide interoperable video conferencing services are found in the Census Bureau Category "All Other Telecommunications."

192. *All Other Telecommunications.* For the 2007 U.S. Census definition of firms included in the category "All Other Telecommunications (NAICS Code 517919)," see paragraph 37 above.

193. In this category, the SBA has deemed a provider of "all other telecommunications" services to be small if it has $25 million or less in average annual receipts. For this category of service providers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 2,383 such firms that operated that year. Of those 2,383 firms, 2,346 (approximately 98%) had $25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 98% or more of the providers of interoperable video conferencing services are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

3. Additional Industry Categories

a. Certain Wireless Carriers and Service Providers

194. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category "Wireless Telecommunications Carriers (except satellite)." Under that SBA category, a business is small if it has 1,500 or fewer employees. The census category of "Cellular and Other Wireless Telecommunications" is no longer used and has been superseded by the larger category "Wireless Telecommunications Carriers (except satellite)." The Census Bureau defines this larger category to include "* * * establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services."

195. In this category, the SBA has deemed a wireless telecommunications carrier to be small if it has fewer than 1,500 employees. For this category of carriers, Census data for 2007, which supersede similar data from the 2002 Census, shows 1,383 firms in this category. Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees. While there is no precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 1,368 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard. On this basis, Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

196. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 licenses. One bidder claiming small business status won five licenses.

197. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders,

19 claimed "small business" status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

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

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

200. *700 MHz Band Commercial Licensees.* There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698–757, 758–763, 776–787, and 788–793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) "Small business," which is defined as an entity with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years; and (2) "very small business," which is defined as an entity with attributed average annual gross revenues that do not exceed $15 million for the preceding three years. In Block C of the Lower 700 MHz Band (710–716 MHz and 740–746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: An "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small size standards.

201. An auction of 740 licenses for Blocks C (710–716 MHz and 740–746 MHz) and D (716–722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: Five EAG licenses and 251 CMA licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

202. The remaining 62 megahertz of commercial spectrum was auctioned on January 24 through March 18, 2008. As explained above, bidding credits for all of these licenses were available to "small businesses" and "very small businesses." Auction 73 concluded with 1,090 provisionally winning bids covering 1,091 licenses and totaling $19,592,420,000. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. The provisionally winning bid for the D Block license, however, did not meet the applicable reserve price and thus did not become a winning bid. Approximately 55 small businesses had winning bids. Currently, the 10 remaining megahertz associated with the D block have not yet been assigned.

203. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

204. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands. Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a "small business," and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a "very small business." SBA has approved these small business size standards for the aforementioned bands. Correspondingly, the Commission adopted a bidding credit of 15 percent for "small businesses" and a bidding credit of 25 percent for "very small businesses." This bidding credit structure was found to have been consistent with the Commission's schedule of bidding credits, which may be found at § 1.2110(f)(2) of the Commission's rules. The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under section 309(j) of the Act to promote opportunities for and disseminate licenses to a wide variety of applicants.

An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

b. Certain Equipment Manufacturers and Stores

205. *Part 15 Handset Manufacturers.* Manufacturers of unlicensed wireless handsets may also become subject to requirements in this proceeding for their handsets used to provide VoIP applications. The Commission has not developed a definition of small entities applicable to unlicensed communications handset manufacturers. Therefore, we will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

206. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 919 firms in this category that operated for the entire year. Of this total, 777 had less than 100 employees, and an additional 148 had over 100 employees. Thus, while we can provide a more precise estimate, under this size standard, the large majority of these firms can be considered small.

207. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: "This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services." The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having $9 million or less in annual receipts. According to Census Bureau data for 2007, there were 18,291 firms in this category that operated for the entire year. Of this total, 17,369 firms had annual sales of under $5 million, and 533 firms had sales of $5 million or more but less than $10 million. Thus, the majority of firms in this category can be considered small.

c. Wireline Carriers and Service Providers

208. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the NPRM. Thus under this category, the majority of these incumbent local exchange service providers can be considered small.

209. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

210. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had

employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

211. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

212. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

213. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed rules.

214. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these PSPs can be considered small entities. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

215. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

216. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data for September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers;

5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

d. Wireless Carriers and Service Providers

217. Below, for those services where licenses are subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of a given auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

218. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

219. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

220. *Common Carrier Paging.* The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The 2007 census also contains data for the specific category of "Paging" "that is classified under the seven-number NAICS code 5172101. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the *220 MHz Third Report and Order,* the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

221. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. Therefore, approximately half of these entities can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

222. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a "small business" for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved

small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

223. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

224. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

225. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

226. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

227. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio ("SMR") geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

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

229. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR

pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

230. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

231. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

232. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). For purposes of its analysis of the Rural Radiotelephone Service, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms in the Rural Radiotelephone Service can be considered small.

233. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

234. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons is considered small. For the category of Wireless Telecommunications Carriers (except satellite), Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

235. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

236. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The

auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

237. *Wireless Cable Systems. Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

238. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." For these services, the Commission uses the SBA small business size standard for the category "Wireless Telecommunications Carriers (except satellite)," which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use the classifications "firms" does not track the number of "licenses".

239. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

240. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

241. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category "Wireless Telecommunications Carriers (except satellite)," which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this

category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications "firms" does not track the number of "licenses". The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

242. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

243. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

244. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

245. The second category, *i.e.* "All Other Telecommunications" comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

e. Cable and OVS Operators

246. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers may not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

247. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

248. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

249. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

250. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the

year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

f. Internet Service Providers, Web Portals and Other Information Services

251. *Internet Service Providers, Web Portals and Other Information Services.* In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals, and (2) All Other Information Services.

252. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled "broadband." The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. These are labeled non-broadband.

253. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of which 159 had nine or fewer employees. For the second category, the data show that 1,682 firms operated for the entire year. Of those, 1,675 had annual receipts below $25 million per year, and an additional two had receipts of between $25 million and $ 49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

254. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users. The SBA has developed a small business size standard for this category; that size standard is fewer than 500 employees. Thus, a firm in this category with less than 500 employees is considered a small business. According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with 500 to 999 employees. Consequently, we estimate the majority of these firms are small entities that may be affected by our proposed actions.

255. *Data Processing, Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services. The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 6,726 had annual receipts of under $25 million, and 155 had receipts between $25 million and $49,999,999 million. Consequently, we estimate that the majority of these firms are small entities that may be affected by our proposed actions.

256. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

257. We summarize below the requirements in the NPRM and proposed rules regarding compliance with sections 716 and 717, including recordkeeping and reporting obligations. Additional information on each of these requirements can be found in the NPRM.

258. *Recordkeeping.* The NPRM proposes, beginning one year after the effective date of regulations promulgated by the Commission pursuant to section 716(e), to require that each manufacturer of equipment (including software) used to provide ACS and each provider of such services

subject to sections 255, 716, and 718, not exempted under rules proposed in that NPRM, maintain, in the ordinary course of business and for a reasonable period, certain records. These records are to document the efforts taken by such manufacturer or service provider to implement sections 255, 716, and 718, including: (1) Information about the manufacturer's or provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.

259. *Reporting Obligations.* The CVAA and the Commission's proposed rules require that an officer of each manufacturer of equipment (including software) used to provide ACS and an officer of each provider of such services submit to the Commission an annual certificate that records are being kept in accordance with the above recordkeeping requirements, unless such manufacturer or provider has been exempted from compliance with section 716 under applicable rules.

260. *Costs of Compliance.* Because of the diverse manufacturers of equipment used to provide ACS and diverse providers of ACS that may be subject to section 716, the possible exemption of certain small entities from compliance with that section, the multiple general and entity-specific factors used in determining, whether for a given manufacturer (or service provider) accessibility for a particular item of ACS equipment (or a particular service) is achievable, and the various provisions of section 716 and the proposed rules on when and to what extent accessibility must be incorporated into a given item of ACS equipment or service, it is difficult to estimate the costs of compliance for those small entities that may not be covered by an exemption or waiver, should the Commission choose to adopt any such exemptions or waivers. Accordingly, the NPRM seeks comment on the costs of compliance with these proposed rules.

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

261. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

262. In addition to the factors in the RFA identified above, the achievability factors in the CVAA also serve to mitigate adverse impacts and reduce burdens on small entities. In the NPRM, the Commission proposes to make determinations about what is achievable by giving four factors equal weight. Two of these factors take into account the resources available to covered entities and may have a direct impact on small entities and the obligations they face under the CVAA: the second factor, the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, and the third factor, the type of operations of the manufacturer or provider. In addition, consideration of the first factor (the nature and cost of the steps needed to meet the requirements with respect to the specific equipment or service in question) and the fourth factor (the extent to which the service provider or manufacturer in question offers accessibility services or equipment containing varying degrees of functionality and features, and offered at different price points) would benefit all entities subject to section 716, including small entities.

263. The Commission proposes not to consider additional factors and only to consider the factors enumerated in the statute, in light of legislative history directing the Commission to weigh the factors equally. While adoption of this proposal would prevent the Commission from considering additional factors that may benefit small entities, it would also require that the Commission consider only the factors listed above, which clearly serve to reduce the burden on small entities. The Commission does, however, seek comment on whether it might have the discretion to weigh other factors not specified in the statute. In addition, the Commission proposes to construe the factors broadly and to weigh any relevant considerations in determining their meaning.

264. The Commission also proposes to consider exemptions from section 716 for small entities and, if one or more such exemptions were adopted, further proposes to consider various criteria in setting standards for such exemptions. The Commission could have proposed not to exercise its discretionary authority to exempt small entities or could have proposed one or more specific size standards for any such exemptions but determined that it was necessary to build a more complete factual record on what factors it should consider in making this determination. Specifically, before making a specific proposal, the Commission seeks to understand the impact any such proposal would have on small entities, the marketplace of ACS services and equipment, and on people with disabilities.

265. In addition, the Commission proposes consideration of specific performance objectives and seeks comment on alternative ways to develop procedures and timelines to develop these objectives. Such alternatives could be structured to reduce the burdens on small entities of compliance with section 716.

266. The Commission also proposes not to adopt technical standards as safe harbors at this time. It determined that it needed to develop a more complete record on this issue before taking action.

267. Finally, the Commission does not propose separate recordkeeping and reporting obligations for small entities. The Commission, however, has proposed that it will not mandate any one form in which records must be kept, to take into account that covered entities have a variety of business models and modes of operation.

F. Federal Rules That May Duplicate, Overlap, or Conflict With Proposed Rules

268. Section 255(e) of the Communications Act, as amended, 47 U.S.C. 255(e), directs the United States Access Board (Access Board) to develop equipment accessibility guidelines "in conjunction with" the Commission, and periodically to review and update those guidelines. We view the Board's current guidelines as well as its draft guidelines as starting points for our interpretation and implementation of sections 716 and 717 of the Communications Act, as amended, 47 U.S.C. 617, 618, as well as section 255, but because they do not currently cover ACS or equipment used to provide or access ACS, we must necessarily adapt these guidelines in our comprehensive implementation scheme. As such, it is our tentative view that our proposed rules do not overlap, duplicate, or conflict with either Access Board Final Rules, or (if later adopted) the Access Board Draft Guidelines.

Paperwork Reduction Act of 1995

269. *Initial Paperwork Reduction Analysis.* The Notice of Proposed Rulemaking contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 60 days after the date of publication in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees." We note that we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the IRFA.

IX. Ordering Clauses

270. Accordingly, *it is ordered* that pursuant to sections 1–4, 255, 303(r), 403, 503, 716, and 717 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, this Notice of Proposed Rulemaking in CG Docket No. 10–145, WT Docket No. 96–198, and CG Docket No. 10–213 is adopted.

271. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Individuals with disabilities, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

47 CFR Parts 6 and 7

Communications equipment, Individuals with disabilities, Telecommunications.

47 CFR Part 8

Advanced communications services equipment, Manufacturers of equipment used for advanced communications services, Providers of advanced communications services, Individuals with disabilities, Recordkeeping and enforcement requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 parts 1, 6, 7, and 8 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 reads as follows:

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154, 160, 201, 225, 303, 617 and 618.

2. Amend § 1.80 by redesignating paragraphs (b)(3), (4) and (5) as paragraphs (b)(4), (5) and (6) and by adding new paragraph (b)(3) and revising newly redesignated paragraph (b)(4) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(3) If the violator is a manufacturer or service provider subject to the requirements of section 255, 716 or 718 of the Communications Act, and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act.

(4) In any case not covered in paragraphs (b)(1), (2), or (3) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $16,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $112,500 for any single act or failure to act described in paragraph (a) of this section.

* * * * *

PART 6—ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES

3. The authority citation for part 6 reads as follows:

Authority: 47 U.S.C. 151–154, 251, 255, 303(r), 617, 618.

Subpart D—[Removed]

4. Remove Subpart D, consisting of §§ 6.15 through 6.23.

PART 7—ACCESS TO VOICEMAIL AND INTERACTIVE MENU SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

5. The authority citation for part 7 reads as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 208, 255, 617, 618.

Subpart D—[Removed]

6. Remove Subpart D, consisting of §§ 7.17 through 7.23.

7. Add part 8 to read as follows:

PART 8—ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

Subpart A—Scope

Sec.

8.1 Applicability.
8.2 Exclusions.
8.3 Waivers.

Subpart B—Definitions

8.4 Definitions.

Subpart C—Implementation Requirements—What Must Covered Entities Do?

8.5 Obligations
8.6 Performance objectives.
8.7 through 8.15 [Reserved]

Subpart D—Recordkeeping and Enforcement

8.16 Generally.
8.17 Recordkeeping.
8.18 Informal or formal complaints.
8.19 Informal complaints; form and content.
8.20 Procedure; designation of agents for service.
8.21 Answers and replies to informal complaints.
8.22 Review and disposition of informal complaints.
8.23 General pleading requirements.
8.24 Format and content of formal complaints.
8.25 Damages.

8.26 Joinder of complainants and causes of action.
8.27 Answers.
8.28 Cross-complaints and counterclaims.
8.29 Replies.
8.30 Motions.
8.31 Formal complaints not stating a cause of action; defective pleadings.
8.32 Discovery.
8.33 Confidentiality of information produced or exchanged by the parties.
8.34 Other required written submissions.
8.35 Status conference.
8.36 Specifications as to pleadings, briefs, and other documents; subscription.
8.37 Copies; service; separate filings against multiple defendants.

Authority: 47 U.S.C. 151–154, 255, 303, 403, 503, 617, 618 unless otherwise noted.

Subpart A—Scope

§ 8.1 Applicability.

Subject to the exclusions described in this part, the rules in this part apply to:

(a) Any provider of advanced communications services, as that term is defined in this part, offering such services in or affecting interstate commerce;

(b) Any manufacturer of equipment used for advanced communications services, including but not limited to end user equipment, network equipment, and software, that such manufacturer offers for sale or otherwise distributes in interstate commerce.

§ 8.2 Exclusions.

(a) Subject to the exception in paragraph (c) of this section, no person shall be subject to the requirements of the rules in this part with respect to advanced communications services or the equipment used to provide or access such services to the extent such person transmits, routes, or stores in intermediate or transient storage the communications made available through the provision of advanced communications services by a third party.

(b) Subject to the exception in paragraph (c) of this section, no person shall be subject to the requirements of the rules in this part with respect to advanced communications services or the equipment used to provide or access such services to the extent such person provides an information location tool, such as a directory, index, reference, pointer, menu, guide, user interface, or hypertext link, through which an end user obtains access to such video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services.

(c) The exclusions in paragraphs (a) and (b) of this section shall not apply to any person who relies on third party applications, services, software, hardware, or equipment to comply with the requirements of this part with respect to the provision of advanced communications services or the manufacture of equipment used to provide such services.

(d) The requirements of this part shall not apply to any equipment or services, including interconnected VoIP service, that were subject to the requirements of section 255 of the Act on October 7, 2010, which remain subject to section 255 of the Act, as amended, and subject to the rules in parts 6 and 7 of this chapter.

(e) None of the rules in this part shall apply to customized equipment or services that are not offered directly to the public regardless of the facilities used. Also, none of the rules in this part shall apply to customized equipment or services that are not offered to such classes of users as to be effectively available to the public regardless of the facilities used. However, this paragraph shall not be construed to create an exemption for equipment or for services designed for and used by members of the general public.

§ 8.3 Waivers.

Multi-purpose Services and Equipment:

(a) *Manufacturer.* On its own motion or in response to a petition by a manufacturer of equipment used to provide or access advanced communications service or by any interested party, the Commission may waive the requirements of this part for a feature or function of equipment used to provide or access advanced communications services, or for any class of such equipment that:

(1) Is capable of accessing advanced communications services and;

(2) Is designed for multiple purposes, but is designed primarily for purposes other than providing or accessing advanced communications services.

(b) *Service Provider.* On its own motion or in response to a petition by a provider of advanced communications services or by any interested party, the Commission may waive the requirements of this part for a feature or function of equipment used to provide or access advanced communications services, or for any class of such equipment that:

(1) Is capable of accessing advanced communications services and;

(2) Is designed for multiple purposes, but is designed primarily for purposes other than providing or accessing advanced communications services.

Subpart B—Definitions

§ 8.4 Definitions.

(a) The term *accessible* shall have the meaning provided in § 8.6(b).

(b) The term *achievable* shall mean with reasonable effort or expense, as determined by the Commission. In making such a determination, the Commission shall consider:

(1) The nature and cost of the steps needed to meet the requirements of section 716 of the Act and this part with respect to the specific equipment or service in question, such that if accessibility to and usability by individuals with disabilities can be achieved only by a fundamental alteration to the specific equipment or service in question, then such accessibility and usability is not achievable;

(2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;

(3) The type and operations of the manufacturer or provider; and

(4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

(c) The term *advanced communications services* shall mean:

(1) Interconnected VoIP service, as that term is defined in this section;

(2) Non-interconnected VoIP service, as that term is defined in this section;

(3) Electronic messaging service, as that term is defined in this section; and

(4) Interoperable video conferencing service, as that term is defined in this section.

(d) The term *application* shall mean software designed to perform or to help the user perform a specific task or specific tasks, such as communicating by voice, electronic text messaging, or video conferencing.

(e) The term *compatible* shall have the meaning provided in § 8.6(d).

(f) The term *customer premises equipment* shall mean equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(g) The term *customized equipment or services* shall mean equipment and services that are customized to unique specifications requested by a consumer and not otherwise available to the general public, including public safety networks and devices, but shall not apply to equipment distributed to and

services used by public or private sector employees, including public safety employees.

(h) The term *disability* shall mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.

(i) The term *electronic messaging service* means a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.

(j) The term *end user equipment* shall mean equipment designed for consumer use, including equipment designed for use by individuals with disabilities.

(k) The term *hardware* shall mean a tangible communications device, equipment, or physical component of communications technology, including peripheral devices, such as a smart phone, a laptop computer, a desk top computer, a screen, a keyboard, a speaker, or an amplifier.

(l) The term *interconnected VoIP service* shall have the same meaning as in § 9.3 of this chapter.

(m) An *interoperable video conferencing service* means a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.

(n) The term *manufacturer* shall mean an entity that makes or produces a product, including equipment used for advanced communications services, including end user equipment, network equipment, and software.

(o) The term *network equipment* shall mean equipment facilitating the use of a computer network, including routers, network interface cards, networking cables, modems, and other related hardware.

(p) The term *nominal cost* in regard to accessibility and usability solutions shall mean small enough so as to generally not be a factor in the consumer's decision to acquire a product or service that the consumer otherwise desires.

(q) A *non-interconnected VoIP service* is a service that:

(1) Enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and

(2) Requires Internet protocol-compatible customer premises equipment (CPE); and

(3) Is not an interconnected VoIP service.

(r) The term *peripheral devices* shall mean devices employed in connection with equipment, including software, covered by this part to translate, enhance, or otherwise transform advanced communications services into a form accessible to individuals with disabilities.

(s) The term *proprietary technology* shall mean hardware, software, and services such as devices, Internet service, and software applications, that are unique and legally owned, or for which a copyright or license is held, by an entity that does not offer such technology free or on an open source basis.

(t) The term *service provider* shall mean a provider of advanced communications services that are offered in or affecting interstate commerce, including a provider of applications and services that can be used for advanced communications services and that can be accessed (*i.e.,* downloaded or run) by users over a service provider's network.

(u) The term *software* shall mean computer programs, procedures, rules, and related data and documentation that direct the use and operation of a computer or related device and instruct it to perform a given task or function.

(v) The term *specialized customer premises equipment* shall mean customer premise equipment which is commonly used by individuals with disabilities to achieve access.

(w) The term *usable* shall have the meaning provided in § 8.6(c).

Subpart C—Implementation Requirements—What Must Covered Entities Do?

§ 8.5 Obligations.

(a) *General Obligations.* (1) With respect to equipment manufactured after the effective date of the regulations, a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, must ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless such requirements are not achievable

(2) With respect to services provided after the effective date of the regulations, a provider of advanced communications services must ensure that services offered by such provider in or affecting interstate commerce are accessible to and usable by individuals with disabilities, unless such requirements are not achievable.

(3) If accessibility is not achievable either by building it in or by using third party accessibility solutions, then a manufacturer or service provider shall ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment.

(4) Providers of advanced communications services shall not install network features, functions, or capabilities that impede accessibility or usability.

(5) Advanced communications services and the equipment and networks used with these services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment or networks.

(b) *Product design, development, and evaluation.* (1) Manufacturers and service providers must consider performance objectives set forth in § 8.7 at the design stage as early and as consistently as possible and must implement such evaluation to the extent that it is achievable.

(2) Manufacturers and service providers must identify barriers to accessibility and usability as part of such evaluation.

(c) *Information Pass Through.* Equipment used for advanced communications services, including end user equipment, network equipment, and software must pass through cross-manufacturer, nonproprietary, industry-standard codes, translation protocols, formats or other information necessary to provide advanced communications services in an accessible format, if achievable. Signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

(d) *Information, documentation, and training.* Manufacturers and service providers must ensure access to information and documentation they provide to customers, if achievable. Such information and documentation includes user guides, bills, installation guides for end user devices, and product support communications, in alternate formats, as needed. The requirement to provide access to information also includes ensuring that individuals with disabilities can access, at no extra cost, call centers and customer support regarding both the product generally and the accessibility features of the product.

§ 8.6 Performance objectives.

(a) Generally—Manufacturers and service providers shall ensure that equipment and services covered by this part are accessible, usable, and compatible as those terms are defined in

paragraphs (b) through (d) of this section.

(b) Accessible—The term accessible shall mean that:

(1) Input, control, and mechanical functions shall be locatable, identifiable, and operable in accordance with each of the following, assessed independently:

(i) Operable without vision. Provide at least one mode that does not require user vision.

(ii) Operable with low vision and limited or no hearing. Provide at least one mode that permits operation by users with visual acuity between 20/70 and 20/200, without relying on audio output.

(iii) Operable with little or no color perception. Provide at least one mode that does not require user color perception.

(iv) Operable without hearing. Provide at least one mode that does not require user auditory perception.

(v) Operable with limited manual dexterity. Provide at least one mode that does not require user fine motor control or simultaneous actions.

(vi) Operable with limited reach and strength. Provide at least one mode that is operable with user limited reach and strength.

(vii) Operable with a Prosthetic Device. Controls shall be operable without requiring body contact or close body proximity.

(viii) Operable without time-dependent controls. Provide at least one mode that does not require a response time or allows response time to be by-passed or adjusted by the user over a wide range.

(ix) Operable without speech. Provide at least one mode that does not require user speech.

(x) Operable with limited cognitive skills. Provide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user.

(2) All information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues, [shall] comply with each of the following, assessed independently:

(i) Availability of visual information. Provide visual information through at least one mode in auditory form.

(ii) Availability of visual information for low vision users. Provide visual information through at least one mode to users with visual acuity between 20/70 and 20/200 without relying on audio.

(iii) Access to moving text. Provide moving text in at least one static presentation mode at the option of the user.

(iv) Availability of auditory information. Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form.

(v) Availability of auditory information for people who are hard of hearing. Provide audio or acoustic information, including any auditory feedback tones that are important for the use of the product, through at least one mode in enhanced auditory fashion (*i.e.,* increased amplification, increased signal-to-noise ratio, or combination).

(vi) Prevention of visually-induced seizures. Visual displays and indicators shall minimize visual flicker that might induce seizures in people with photosensitive epilepsy.

(vii) Availability of audio cutoff. Where a product delivers audio output through an external speaker, provide an industry standard connector for headphones or personal listening devices (*e.g.,* phone-like handset or earcup) which cuts off the speaker(s) when used.

(viii) Non-interference with hearing technologies. Reduce interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) to the lowest possible level that allows a user to utilize the product.

(ix) Hearing aid coupling. Where a product delivers output by an audio transducer which is normally held up to the ear, provide a means for effective wireless coupling to hearing aids.

(c) Usable: The term *usable* shall mean that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation and technical support functionally equivalent to that provided to individuals without disabilities.

(d) Compatible: The term *compatible* shall mean compatible with peripheral devices and specialized customer premises equipment, and in compliance with the following provisions, as applicable:

(1) External electronic access to all information and control mechanisms. Information needed for the operation of products (including output, alerts, icons, on-line help, and documentation) shall be available in a standard electronic text format on a cross-industry standard port and all input to and control of a product shall allow for real time operation by electronic text input into a cross-industry standard external port and in cross-industry standard format. The cross-industry standard port shall not require manipulation of a connector by the user.

(2) Connection point for external audio processing devices. Products providing auditory output shall provide the auditory signal at a standard signal level through an industry standard connector.

(3) TTY connectability. Products that provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. It shall also be possible for the user to easily turn any microphone on and off to allow the user to intermix speech with TTY use.

(4) TTY signal compatibility. Products, including those providing voice communication functionality, shall support use of all cross-manufacturer non-proprietary standard signals used by TTYs.

§§ 8.7–8.15 [Reserved]

Subpart D—Recordkeeping and Enforcement

§ 8.16 Generally.

(a) The rules in this subpart regarding recordkeeping and enforcement are applicable to all manufacturers and service providers that are subject to the requirements of sections 255, 716, and 718 of the Act.

(b) The requirements set forth in § 8.17 of this subpart shall be effective [DATE ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

§ 8.17 Recordkeeping.

(a) Each manufacturer and service provider subject to sections 255, 716, or 718 of the Act, must maintain, in the ordinary course of business and for a reasonable period, records of the efforts taken by such manufacturer or provider to implement sections 255, 716, and 718, as applicable, including:

(1) Information about the manufacturer's or service provider's efforts to consult with individuals with disabilities;

(2) Descriptions of the accessibility features of its products and services; and

(3) Information about the compatibility of its products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.

(b) An officer of each manufacturer and service provider subject to section 255, 716, or 718 of the Act, must sign and file an annual compliance certificate with the Commission. The

officer must state in the certificate that he or she has personal knowledge that the manufacturer or service provider has established operating procedures that are adequate to ensure compliance with the rules in this subpart and that records are being kept in accordance with this section. The certificate shall identify the agent designated for service pursuant to § 8.20(b) of this subpart and provide contact information for this agent.

(c) Upon the service of a complaint, formal or informal, on a manufacturer or service provider under this section, a copy of the records maintained by the manufacturer or service provider that are directly relevant to the equipment or service that is the subject of the complaint shall be provided to the Commission in accordance with § 8.21(a) of this subpart. Requests for confidential treatment of documents or information submitted under this section may be filed in accordance with § 0.459 of this chapter.

(d) In response to a filed formal or informal complaint, a manufacturer or service provider may, instead of providing a duplicate document, record or other information directly related to the equipment or service that is the subject of the complaint, direct the Commission to documents or records already in the Commission's possession by providing sufficient specificity for Commission staff to locate the relevant record or document or portion thereof, including (title of proceeding or report, date, page/para. #s, etc.).

§ 8.18 Informal or formal complaints.

Complaints against manufacturers or service providers, as defined under this subpart, for alleged violations of this subpart may be either informal or formal.

§ 8.19 Informal complaints; form and content.

(a) An informal complaint alleging a violation of sections 255, 716 or 718 of the Act or this chapter may be transmitted to the Commission via any reasonable means, *e.g.,* letter, facsimile transmission, telephone (202–418–2517 (voice); 202–418–2922 (TTY)), Internet-e-mail (*dro@fcc.gov*), audio-cassette recording, and Braille.

(b) An informal complaint shall include:

(1) The name, address, e-mail address, and telephone number of the complainant;

(2) The name and address of the manufacturer or service provider defendant against whom the complaint is made;

(3) The date or dates on which the complainant or person on whose behalf the complaint is being filed either purchased, acquired, or used or attempted to purchase, acquire, or use the equipment or service about which the complaint is being made;

(4) A complete statement of fact explaining why the complainant contends that the defendant manufacturer or provider is in violation of section 255, 716 or 718 of the Act or this chapter, including details regarding the service or equipment and the relief requested, and all documentation that supports the complainant's contention;

(5) The complainant's preferred format or method of response to the complaint by the Commission and defendant (*e.g.,* letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, Braille; or some other method that will best accommodate the complainant's disability, if any; and

(6) Any other information that is required by the Commission's accessibility complaint form.

§ 8.20 Procedure; designation of agents for service.

(a) The Commission shall promptly forward any informal complaint meeting the requirements of § 8.19 of this subpart to each manufacturer and service provider named in or determined by the staff to be implicated by the complaint.

(b) To ensure prompt and effective service of informal and formal complaints filed under this subpart, every manufacturer and service provider subject to the requirements of section 255, 716, or 718 of the Act and this subpart, shall designate an agent, and may designate additional agents if it so chooses, upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. Such designation shall include, for the manufacturer or the service provider, a name or department designation, business address, telephone number, and, if available TTY number, facsimile number, and Internet e-mail address.

§ 8.21 Answers and replies to informal complaints.

(a) Any manufacturer or service provider to whom an informal complaint is directed by the Commission under this subpart shall file and serve an answer. The answer shall:

(1) Be filed with the Commission and served on the complainant within twenty days of service of the complaint, unless the Commission or its staff specifies another time period;

(2) Respond specifically to each material allegation in the complaint;

(3) Set forth the steps taken by the manufacturer or service provider to make the product or service accessible and usable;

(4) Set forth the procedures and processes used by the manufacturer or service provider to evaluate whether it was achievable to make the product or service accessible and usable;

(5) Set forth the names, titles, and responsibilities of each decision maker in the evaluation process;

(6) Set forth the manufacturer's basis for determining that it was not achievable to make the product or service accessible and usable;

(7) Provide all documents supporting the manufacturer's or service provider's conclusion that it was not achievable to make the product or service accessible and usable;

(8) Include a certification by an officer of the manufacturer or service provider that it was not achievable to make the product or service accessible and usable;

(9) Set forth any claimed defenses;

(10) Set forth any remedial actions already taken or proposed alternative relief without any prejudice to any denials or defenses raised;

(11) Provide any other information or materials specified by the Commission as relevant to its consideration of the complaint; and

(12) Must be prepared or formatted in the manner requested by the Commission and the complainant, unless otherwise permitted by the Commission for good cause shown.

(b) The complainant may file and serve a reply. The reply shall:

(1) Be served on the Commission and the complainant within ten days after service of answer, unless otherwise directed by the Commission;

(2) Be responsive to matters contained in the answer and shall not contain new matters.

§ 8.22 Review and disposition of informal complaints.

(a) The Commission will investigate the allegations in any informal complaint filed that satisfies the requirements of § 8.18(b) of this subpart, and, within 180 days after the date on which such complaint was filed with the Commission, issue an order finding whether the manufacturer or service provider that is the subject of the complaint violated section 255, 716, or 718 of the Act, or the Commission's implementing rules, and provide a basis therefor, unless such complaint is resolved before that time.

(b) If the Commission determines in an order issued pursuant to paragraph

(a) of this section that the manufacturer or service provider violated section 255, 716, or 718 of the Act, or the Commission's implementing rules, the Commission may, in such order, or in a subsequent order:

(1) Direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance with the requirements of sections 255, 716, or 718 of the Act, and the Commission's rules, within a reasonable period of time; and

(2) Take such other enforcement action as the Commission is authorized and as it deems appropriate.

(c) Any manufacturer or service provider that is the subject of an order issued pursuant to paragraph (b)(1) of this section shall have a reasonable opportunity, as established by the Commission, to comment on the Commission's proposed remedial action before the Commission issues a final order with respect to that action.

§ 8.23 General pleading requirements.

Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments. Commission proceedings may also require or permit other written submissions such as briefs, written interrogatories, and other supplementary documents or pleadings.

(a) Pleadings must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy, including damages, should be pleaded fully and with specificity.

(b) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation, or a defense to such alleged violation.

(c) Facts must be supported by relevant documentation or affidavit.

(d) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority.

(e) Opposing authorities must be distinguished.

(f) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(g) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(h) All statements purporting to summarize or explain Commission orders or policies must cite, in standard legal form, the Commission ruling upon which such statements are based.

(i) Pleadings shall identify the name, address, telephone number, and facsimile transmission number for either the filing party's attorney or, where a party is not represented by an attorney, the filing party.

§ 8.24 Format and content of formal complaints.

(a) Subject to paragraph (e) of this section governing supplemental complaints filed pursuant to § 8.25 of this subpart, a formal complaint shall contain:

(1) The name of each complainant and defendant;

(2) The occupation, address and telephone number of each complainant and, to the extent known, each defendant;

(3) The name, address, and telephone number of complainant's attorney, if represented by counsel;

(4) Citation to the section of the Communications Act and/or order and/or regulation of the Commission alleged to have been violated.

(5) A complete statement of facts which, if proven true, would constitute such a violation. All material facts must be supported, pursuant to the requirements of § 8.30(c) of this subpart and paragraph (a)(11) of this section, by relevant affidavits and documentation, including copies of relevant written agreements, offers, counter-offers, denials, or other related correspondence. The statement of facts shall include a detailed explanation of the manner and time period in which a defendant has allegedly violated the Act, Commission order, or Commission rule in question, including a full identification or description of the communications, transmissions, services, or other carrier conduct complained of and the nature of any injury allegedly sustained by the complainant. Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the plaintiff's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

(6) Proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the complaint;

(7) The relief sought, including recovery of damages and the amount of damages claimed, if known;

(8) Certification that the complainant has, in good faith, discussed or attempted to discuss the possibility of settlement with each defendant prior to the filing of the formal complaint. Such certification shall include a statement that, prior to the filing of the complaint, the complainant mailed a certified letter outlining the allegations that form the basis of the complaint it anticipated filing with the Commission to the defendant carrier or one of the defendant's registered agents for service of process that invited a response within a reasonable period of time and a brief summary of all additional steps taken to resolve the dispute prior to the filing of the formal complaint. If no additional steps were taken, such certificate shall state the reason(s) why the complainant believed such steps would be fruitless;

(9) Whether a separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or same set of facts, in whole or in part, or whether the complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission;

(10) An information designation containing:

(i) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the complaint, along with a description of the facts within any such individual's knowledge;

(ii) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control, that are relevant to the facts alleged with particularity in the complaint. Such description shall include for each document:

(A) The date it was prepared, mailed, transmitted, or otherwise disseminated;

(B) The author, preparer, or other source;

(C) The recipient(s) or intended recipient(s);

(D) Its physical location; and

(E) A description of its relevance to the matters contained in the complaint; and

(iii) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used

to identify such persons, documents, data compilations, tangible things, and information;

(11) Copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the complaint;

(12) A completed Formal Complaint Intake Form;

(13) A declaration, under penalty of perjury, by the complainant or complainant's counsel describing the amount, method, and the complainant's 10-digit FCC Registration Number, if any;

(14) A certificate of service; and

(15) A FCC Registration Number is required under part 1, subpart W. Submission of a complaint without the FCC Registration Number as required by part 1, subpart W will result in dismissal of the complaint.

(b) The following format may be used in cases to which it is applicable, with such modifications as the circumstances may render necessary:

Before the Federal Communications Commission, Washington, DC 20554

In the matter of
Complainant,
v.
Defendant.
File No. (To be inserted by the Enforcement Bureau)

Complaint

To: The Commission.
The complainant (here insert full name of each complainant and, if a corporation, the corporate title of such complainant) shows that:
(1) (Here state post office address, and telephone number of each complainant).
(2) (Here insert the name, and, to the extent known, address and telephone number of defendants).
(3) (Here insert fully and clearly the specific act or thing complained of, together with such facts as are necessary to give a full understanding of the matter, including relevant legal and documentary support).
Wherefore, complainant asks (here state specifically the relief desired).
(Date)
(Name of each complainant)
(Name, address, and telephone number of attorney, if any)

(c) The complainant may petition the staff, pursuant to § 1.3 of this chapter, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

(d) Supplemental complaints:

(1) Supplemental complaints filed pursuant to § 8.25 shall conform to the requirements set out in this section and § 8.23 of this subpart, except that the requirements in §§ 8.23(b), 8.24(a)(4), (a)(5), (a)(8), (a)(9), (a)(12), and (a)(13) of this subpart shall not apply to such supplemental complaints;

(2) In addition, supplemental complaints filed pursuant to § 8.25 of this subpart shall contain a complete statement of facts which, if proven true, would support complainant's calculation of damages for each category of damages for which recovery is sought. All material facts must be supported, pursuant to the requirements of § 8.23(c) of this subpart and paragraph (a)(11) of this section, by relevant affidavits and other documentation. The statement of facts shall include a detailed explanation of the matters relied upon, including a full identification or description of the communications, transmissions, services, or other matters relevant to the calculation of damages and the nature of any injury allegedly sustained by the complainant. Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the complainant's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

(3) Supplemental complaints filed pursuant to § 8.25 of this subpart shall contain a certification that the complainant has, in good faith, discussed or attempted to discuss the possibility of settlement with respect to damages for which recovery is sought with each defendant prior to the filing of the supplemental complaint. Such certification shall include a statement that, no later than 30 days after the release of the liability order, the complainant mailed a certified letter to the primary individual who represented the defendant carrier during the initial complaint proceeding outlining the allegations that form the basis of the supplemental complaint it anticipates filing with the Commission and inviting a response from the carrier within a reasonable period of time. The certification shall also contain a brief summary of all additional steps taken to resolve the dispute prior to the filing of the supplemental complaint. If no additional steps were taken, such certification shall state the reason(s) why the complainant believed such steps would be fruitless.

§ 8.25 Damages.

(a) A complaint against a common carrier may seek damages. If a complainant wishes to recover damages, the complaint must contain a clear and unequivocal request for damages.

(b) If a complainant wishes a determination of damages to be made in the same proceeding as the determinations of liability and prospective relief, the complaint must contain the allegations and information required by paragraph (h) of this section.

(c) Notwithstanding paragraph (b) of this section, in any proceeding to which no statutory deadline applies, if the Commission decides that a determination of damages would best be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made, the Commission may at any time order that the initial proceeding will determine only liability and prospective relief, and that a separate, subsequent proceeding initiated in accordance with paragraph (e) of this section will determine damages.

(d) If a complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made, the complainant must:

(1) Comply with paragraph (a) of this section, and

(2) State clearly and unequivocally that the complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief will be made.

(e) If a complainant proceeds pursuant to paragraph (d) of this section, or if the Commission invokes its authority under paragraph (c) of this section, the complainant may initiate a separate proceeding to obtain a determination of damages by filing a supplemental complaint that complies with § 8.24(d) of this subpart and paragraph (h) of this section within sixty days after public notice (as defined in § 1.4(b) of this chapter) of a decision that contains a finding of liability on the merits of the original complaint.

(f) If a complainant files a supplemental complaint for damages in accordance with paragraph (e) of this section, the supplemental complaint shall be deemed, for statutory limitations purposes, to relate back to the date of the original complaint.

(g) Where a complainant chooses to seek the recovery of damages upon a supplemental complaint in accordance with the requirements of paragraph (e) of this section, the Commission will resolve the separate, preceding liability complaint within any applicable

complaint resolution deadlines contained in the Act.

(h) In all cases in which recovery of damages is sought, it shall be the responsibility of the complainant to include, within either the complaint or supplemental complaint for damages filed in accordance with paragraph (e) of this section, either:

(1) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; or

(2) An explanation of:

(i) The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(ii) Why such information is unavailable to the complaining party;

(iii) The factual basis the complainant has for believing that such evidence of damages exists;

(iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

(i) Where a complainant files a supplemental complaint for damages in accordance with paragraph (e) of this section, the following procedures may apply:

(1) Issues concerning the amount, if any, of damages may be either designated by the Enforcement Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge. Such Administrative Law Judge shall be chosen in the following manner:

(i) By agreement of the parties and the Chief Administrative Law Judge; or

(ii) In the absence of such agreement, the Chief Administrative Law Judge shall designate the Administrative Law Judge.

(2) The Commission may, in its discretion, order the defendant either to post a bond for, or deposit into an interest bearing escrow account, a sum equal to the amount of damages which the Commission finds, upon preliminary investigation, is likely to be ordered after the issue of damages is fully litigated, or some lesser sum which may be appropriate, provided the Commission finds that the grant of this relief is favored on balance upon consideration of the following factors:

(i) The complainant's potential irreparable injury in the absence of such deposit;

(ii) The extent to which damages can be accurately calculated;

(iii) The balance of the hardships between the complainant and the defendant; and

(iv) Whether public interest considerations favor the posting of the bond or ordering of the deposit.

(3) The Commission may, in its discretion, suspend ongoing damages proceedings for fourteen days, to provide the parties with a time within which to pursue settlement negotiations and/or alternative dispute resolution procedures.

(4) The Commission may, in its discretion, end adjudication of damages with a determination of the sufficiency of a damages computation method or formula. No such method or formula shall contain a provision to offset any claim of the defendant against the complainant. The parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated method or formula. Within thirty days of the release date of the damages order, parties shall submit jointly to the Commission either:

(i) A statement detailing the parties' agreement as to the amount of damages;

(ii) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(iii) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(j) Except where otherwise indicated, the rules governing initial formal complaint proceedings govern supplemental formal complaint proceedings, as well.

§ 8.26 Joinder of complainants and causes of action.

(a) Two or more complainants may join in one complaint if their respective causes of action are against the same defendant and concern substantially the same facts and alleged violation of the Communications Act.

(b) Two or more grounds of complaint involving the same principle, subject, or statement of facts may be included in one complaint, but should be separately stated and numbered.

§ 8.27 Answers.

(a) Any defendant upon whom copy of a formal complaint is served shall answer such complaint in the manner prescribed under this section within twenty days of service of the formal complaint by the complainant, unless otherwise directed by the Commission.

(b) The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint. Every effort shall be made to narrow the issues in the answer. The defendant shall state concisely its defense to each claim asserted, admit or deny the averments on which the complainant relies, and state in detail the basis for admitting or denying such averment. General denials are prohibited. Denials based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the defendant's belief and why the defendant could not reasonably ascertain the facts from the complainant or any other source. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the defendant shall specify so much of it as is true and shall deny only the remainder. The defendant may deny the allegations of the complaint as specific denials of either designated averments or paragraphs.

(c) The answer shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the answer.

(d) Averments in a complaint or supplemental complaint filed pursuant to § 8.25 of this subpart are deemed to be admitted when not denied in the answer.

(e) Affirmative defenses to allegations contained in the complaint shall be specifically captioned as such and presented separately from any denials made in accordance with paragraph (c) of this section.

(f) The answer shall include an information designation containing:

(1) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the answer, along with a description of the facts within any such individual's knowledge;

(2) A description of all documents, data compilations and tangible things in the defendant's possession, custody, or control, that are relevant to the facts alleged with particularity in the answer. Such description shall include for each document:

(i) The date it was prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the defendant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.

(g) The answer shall attach copies of all affidavits, documents, data compilations and tangible things in the defendant's possession, custody, or control, upon which the defendant relies or intends to rely to support the facts alleged and legal arguments made in the answer.

(h) The answer shall contain certification that the defendant has, in good faith, discussed or attempted to discuss, the possibility of settlement with the complainant prior to the filing of the formal complaint. Such certification shall include a brief summary of all steps taken to resolve the dispute prior to the filing of the formal complaint. If no such steps were taken, such certificate shall state the reason(s) why the defendant believed such steps would be fruitless;

(i) The defendant may petition the staff, pursuant to § 1.3 of this chapter, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

§ 8.28 Cross-complaints and counterclaims.

Cross-complaints seeking any relief within the jurisdiction of the Commission against any party (complainant or defendant) to that proceeding are expressly prohibited. Any claim that might otherwise meet the requirements of a cross-complaint may be filed as a separate complaint in accordance with §§ 8.23 through 8.37 of this subpart. For purposes of this subpart, the term "cross-complaint" shall include counterclaims.

§ 8.29 Replies.

(a) Within three days after service of an answer containing affirmative defenses presented in accordance with the requirements of § 8.27(e) of this subpart, a complainant may file and serve a reply containing statements of relevant, material facts and legal arguments that shall be responsive to only those specific factual allegations and legal arguments made by the defendant in support of its affirmative defenses. Replies which contain other allegations or arguments will not be accepted or considered by the Commission.

(b) Failure to reply to an affirmative defense shall be deemed an admission of such affirmative defense and of any facts supporting such affirmative defense that are not specifically contradicted in the complaint.

(c) The reply shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the reply.

(d) The reply shall include an information designation containing:

(1) The name, address and position of each individual believed to have firsthand knowledge about the facts alleged with particularity in the reply, along with a description of the facts within any such individual's knowledge.

(2) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control that are relevant to the facts alleged with particularity in the reply. Such description shall include for each document:

(i) The date prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(e) The reply shall attach copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the reply.

(f) The complainant may petition the staff, pursuant to § 1.3 of this chapter, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

§ 8.30 Motions.

(a) A request to the Commission for an order shall be by written motion, stating with particularity the grounds and authority therefor, and setting forth the relief or order sought.

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of § 8.23(c) of this subpart, except for those facts of which official notice may be taken.

(c) The moving party shall provide a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly marked as a "Proposed Order." The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 8.36(d) of this subpart. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(d) Oppositions to any motion shall be accompanied by a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly captioned as a "Proposed Order." The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 8.36(d) of this subpart. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(e) Oppositions to motions may be filed and served within five business days after the motion is filed and served and not after. Oppositions shall be limited to the specific issues and allegations contained in such motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting of the motion.

(f) No reply may be filed to an opposition to a motion.

(g) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(h) Amendments or supplements to complaints to add new claims or requests for relief are prohibited. Parties are responsible, however, for the continuing accuracy and completeness of all information and supporting

authority furnished in a pending complaint proceeding as required under § 8.23(g) of this subpart.

§ 8.31 Formal complaints not stating a cause of action; defective pleadings.

(a) Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act or a Commission rule or order will be dismissed. In such case, any amendment or supplement to such document will be considered a new filing which must be made within the statutory periods of limitations of actions contained in section 415 of the Communications Act.

(b) Any other pleading filed in a formal complaint proceeding not in conformity with the requirements of the applicable rules in this part may be deemed defective. In such case the Commission may strike the pleading or request that specified defects be corrected and that proper pleadings be filed with the Commission and served on all parties within a prescribed time as a condition to being made a part of the record in the proceeding.

§ 8.32 Discovery.

(a) A complainant may file with the Commission and serve on a defendant, concurrently with its complaint, a request for up to ten written interrogatories. A defendant may file with the Commission and serve on a complainant, during the period starting with the service of the complaint and ending with the service of its answer, a request for up to ten written interrogatories. A complainant may file with the Commission and serve on a defendant, within three calendar days of service of the defendant's answer, a request for up to five written interrogatories. Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. Requests for interrogatories filed and served pursuant to this procedure may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding, provided, however, that requests for interrogatories filed and served by a complainant after service of the defendant's answer shall be limited in scope to specific factual allegations made by the defendant in support of its affirmative defenses. This procedure may not be employed for the purpose of delay, harassment or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding.

(b) Requests for interrogatories filed and served pursuant to paragraph (a) of this section shall contain a listing of the interrogatories requested and an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.

(c) A responding party shall file with the Commission and serve on the propounding party any opposition and objections to the requests for interrogatories as follows:

(1) By the defendant, within ten calendar days of service of the requests for interrogatories served simultaneously with the complaint and within five calendar days of the requests for interrogatories served following service of the answer;

(2) By the complainant, within five calendar days of service of the requests for interrogatories; and

(3) In no event less than three calendar days prior to the initial status conference as provided for in § 8.35(a) of this subpart.

(d) Commission staff will consider the requests for interrogatories, properly filed and served pursuant to paragraph (a) of this section, along with any objections or oppositions thereto, properly filed and served pursuant to paragraph (b) of this section, at the initial status conference, as provided for in § 8.35(a)(5) of this subpart, and at that time determine the interrogatories, if any, to which parties shall respond, and set the schedule of such response.

(e) The interrogatories ordered to be answered pursuant to paragraph (d) of this section are to be answered separately and fully in writing under oath or affirmation by the party served, or if such party is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. The answers shall be signed by the person making them. The answers shall be filed with the Commission and served on the propounding party.

(f) A propounding party asserting that a responding party has provided an inadequate or insufficient response to a Commission-ordered discovery request may file a motion to compel within ten days of the service of such response, or as otherwise directed by Commission staff, pursuant to the requirements of § 8.30 of this subpart.

(g) The Commission may, in its discretion, require parties to provide documents to the Commission in a scanned or other electronic format that provides:

(1) Indexing by useful identifying information about the documents; and

(2) Technology that allows staff to annotate the index so as to make the format an efficient means of reviewing the documents.

(h) The Commission may allow additional discovery, including, but not limited to, document production, depositions and/or additional interrogatories. In its discretion, the Commission may modify the scope, means and scheduling of discovery in light of the needs of a particular case and the requirements of applicable statutory deadlines.

§ 8.33 Confidentiality of information produced or exchanged by the parties.

(a) Any materials generated in the course of a formal complaint proceeding may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1) through (9). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(b) Materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) These individuals shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each

individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(d) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraph (b) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(e) Upon termination of a formal complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

§ 8.34 Other required written submissions.

(a) The Commission may, in its discretion, or upon a party's motion showing good cause, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(b) Unless otherwise directed by the Commission, all briefs shall include all legal and factual claims and defenses previously set forth in the complaint, answer, or any other pleading submitted in the proceeding. Claims and defenses previously made but not reflected in the briefs will be deemed abandoned. The Commission may, in its discretion, limit the scope of any briefs to certain subjects or issues. A party shall attach to its brief copies of all documents, data compilations, tangible things, and affidavits upon which such party relies or intends to rely to support the facts alleged and legal arguments made in its brief and such brief shall contain a full explanation of how each attachment is relevant to the issues and matters in dispute. All such attachments to a brief shall be documents, data compilations or tangible things, or affidavits made by persons, that were identified by any party in its information designations filed pursuant to §§ 8.24(a)(10)(i), (a)(10)(ii), 8.27(f)(1), (f)(2), and 8.29(d)(1), (d)(2) of this subpart. Any other supporting documentation or affidavits that is attached to a brief must be accompanied by a full explanation of the relevance of such materials and why such materials were not identified in the information designations. These briefs shall contain the proposed findings of fact and conclusions of law which the filing party is urging the Commission to adopt, with specific citation to the record, and supporting relevant authority and analysis.

(c) In cases in which discovery is not conducted, absent an order by the Commission that briefs be filed, parties may not submit briefs. If the Commission does authorize the filing of briefs in cases in which discovery is not conducted, briefs shall be filed concurrently by both the complainant and defendant at such time as designated by the Commission staff and in accordance with the provisions of this section.

(d) In cases in which discovery is conducted, briefs shall be filed concurrently by both the complainant and defendant at such time designated by the Commission staff.

(e) Briefs containing information which is claimed by an opposing or third party to be proprietary under § 8.33 of this subpart shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked "Not for Public Inspection." An edited version removing all proprietary data shall also be filed with the Commission for inclusion in the public file. Edited versions shall be filed within five days from the date the unedited brief is submitted, and served on opposing parties.

(f) Initial briefs shall be no longer than twenty-five pages. Reply briefs shall be no longer than ten pages. Either on its own motion or upon proper motion by a party, the Commission staff may establish other page limits for briefs.

(g) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.

(h) The parties shall submit a joint statement of stipulated facts, disputed facts, and key legal issues no later than two business days prior to the initial status conference, scheduled in accordance with the provisions of § 8.35(a) of this subpart.

§ 8.35 Status conference.

(a) In any complaint proceeding, the Commission may, in its discretion, direct the attorneys and/or the parties to appear before it for a status conference. Unless otherwise ordered by the Commission, an initial status conference shall take place, at the time and place designated by the Commission staff, ten business days after the date the answer is due to be filed. A status conference may include discussion of:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of additional pleadings or evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of all or some of the matters in controversy by agreement of the parties;

(5) Whether discovery is necessary and, if so, the scope, type and schedule for such discovery;

(6) The schedule for the remainder of the case and the dates for any further status conferences; and

(7) Such other matters that may aid in the disposition of the complaint.

(b)(1) Parties shall meet and confer prior to the initial status conference to discuss:

(i) Settlement prospects;

(ii) Discovery;

(iii) Issues in dispute;

(iv) Schedules for pleadings;

(v) Joint statement of stipulated facts, disputed facts, and key legal issues; and

(2) Parties shall submit a joint statement of all proposals agreed to and disputes remaining as a result of such meeting to Commission staff at least two business days prior to the scheduled initial status conference.

(c) In addition to the initial status conference referenced in paragraph (a) of this section, any party may also request that a conference be held at any time after the complaint has been filed.

(d) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a formal complaint proceeding including, inter alia, procedural matters, discovery, and the submission of briefs or other evidentiary materials.

(e) Parties may make, upon written notice to the Commission and all attending parties at least three business days prior to the status conference, an audio recording of the Commission staff's summary of its oral rulings. Alternatively, upon agreement among all attending parties and written notice to the Commission at least three business days prior to the status conference, the parties may make an audio recording of, or use a stenographer to transcribe, the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, as well as the Commission staff's summary of its oral rulings. A complete transcript of any

audio recording or stenographic transcription shall be filed with the Commission as part of the record, pursuant to the provisions of paragraph (f)(2) of this section. The parties shall make all necessary arrangements for the use of a stenographer and the cost of transcription, absent agreement to the contrary, will be shared equally by all parties that agree to make the record of the status conference.

(f) The parties in attendance, unless otherwise directed, shall either:

(1) Submit a joint proposed order memorializing the oral rulings made during the conference to the Commission by 5:30 p.m., Eastern Time, on the business day following the date of the status conference, or as otherwise directed by Commission staff. In the event the parties in attendance cannot reach agreement as to the rulings that were made, the joint proposed order shall include the rulings on which the parties agree, and each party's alternative proposed rulings for those rulings on which they cannot agree. Commission staff will review and make revisions, if necessary, prior to signing and filing the submission as part of the record. The proposed order shall be submitted both as hard copy and on computer disk in accordance with the requirements of § 8.36(d) of this subpart; or

(2) Pursuant to the requirements of paragraph (e) of this section, submit to the Commission by 5:30 p.m., Eastern Time, on the third business day following the status conference or as otherwise directed by Commission staff either:

(i) A transcript of the audio recording of the Commission staff's summary of its oral rulings;

(ii) A transcript of the audio recording of the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, and the Commission staff's summary of its oral rulings; or

(iii) A stenographic transcript of the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, and the Commission staff's summary of its oral rulings.

(g) Status conferences will be scheduled by the Commission staff at such time and place as it may designate to be conducted in person or by telephone conference call.

(h) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver by that party and will not preclude the Commission staff from conferring with those parties and/or counsel present.

§ 8.36 Specifications as to pleadings, briefs, and other documents; subscription.

(a) All papers filed in any formal complaint proceeding must be drawn in conformity with the requirements of §§ 1.49 and 1.50 of this chapter.

(b) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(c) The original of all pleadings and other submissions filed by any party shall be signed by the party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, facsimile number and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed solely for purposes of delay or for any other improper purpose.

(d) All proposed orders shall be submitted both as hard copies and on computer disk formatted to be compatible with the Commission's computer system and using the Commission's current word processing software. Each disk should be submitted in "read only" mode. Each disk should be clearly labeled with the party's name, proceeding, type of pleading, and date of submission. Each disk should be accompanied by a cover letter. Parties who have submitted copies of tariffs or reports with their hard copies need not include such tariffs or reports on the disk. Upon showing of good cause, the Commission may waive the requirements of this paragraph.

§ 8.37 Copies; service; separate filings against multiple defendants.

(a) Complaints may generally be brought against only one named defendant; such actions may not be brought against multiple defendants unless the defendants are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant shall file an original copy of the complaint and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;

(2) Serve two copies on the Enforcement Bureau; and

(3) If a complaint is addressed against multiple defendants, file three copies of the complaint with the Office of the Commission Secretary for each additional defendant.

(c) Generally, a separate file is set up for each defendant. An original plus two copies shall be filed of all pleadings and documents, other than the complaint, for each file number assigned.

(d) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of paragraph (b) of this section.

(e) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by facsimile transmission to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall send, by regular U.S. mail delivery, to each defendant named in the complaint, a copy of the complaint. The Commission shall additionally send, by regular U.S. mail to all parties, a schedule detailing the date the answer will be due and the date, time and location of the initial status conference.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents or other written submissions, shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or by facsimile transmission followed by regular U.S. mail delivery, together with a proof of such service in accordance with the requirements of § 1.47(g) of this chapter. Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed

served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service such as, or comparable to, the US Postal Service Express Mail, United Parcel Service or Federal Express; or

(3) Service by facsimile transmission that is fully transmitted to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by facsimile transmission that is fully transmitted to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day.

(g) Supplemental complaint proceedings. Supplemental complaints filed pursuant to § 8.25 of this subpart shall conform to the requirements set out in this section, except that the complainant need not submit a filing fee, and the complainant may effect service pursuant to paragraph (f) of this section rather than paragraph (d) of this section numerals.

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Part V

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0017; FRL–9278–5]

RIN 2060–AN99

National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: This action proposes amendments to the national emission standards for hazardous air pollutants (NESHAP) for mercury emissions from mercury cell chlor-alkali plants (Mercury Cell NESHAP). On June 11, 2008, EPA proposed amendments to this NESHAP in response to a petition for reconsideration filed by the Natural Resources Defense Council (NRDC). This action is a supplement to the June 11, 2008, proposal. Specifically, this action proposes two options for amending the NESHAP for mercury emissions from mercury cell chlor-alkali plants. The first option would require the elimination of mercury emissions and thus encourage the conversion to non-mercury technology. The second option would require the measures proposed in 2008. These measures, which included significant improvements in the work practices to reduce fugitive emissions from the cell room, would result in near-zero levels of mercury emissions while still allowing the mercury cell facilities to continue to operate. We are specifically requesting comment on which of these options is more appropriate, and may finalize either option or a combination of elements from them. In addition, this action proposes several amendments that would apply regardless of which option we select. These proposed amendments are provisions of the existing NESHAP that would apply to periods of startup, shutdown, and malfunction (SSM), and corrections to compliance errors in the currently effective rule.

DATES: Comments must be received on or before May 13, 2011. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before April 13, 2011.

Public Hearing. If anyone contacts EPA by March 29, 2011 requesting to speak at a public hearing, EPA will hold a public hearing on April 13, 2011. If a public hearing is held, it will be held at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. Contact Virginia Hunt at (919) 541–0832 to request a hearing, to determine if a hearing will be held, or to determine the hearing location. If no one contacts EPA requesting to speak at a public hearing concerning this proposed rule by March 29, 2011, the hearing will be cancelled without further notice.

ADDRESSES: You may submit comments, identified by Docket ID No. EPA–HQ–OAR–2002–0017, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.
- *E-mail: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2002–0017 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* National Emission Standards for Hazardous Air Pollutants for Mercury Cell Chlor-alkali Plants Docket, Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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–2002–0017. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Mercury Cell Chlor-alkali Plants 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Sharon Nizich, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2825; fax number: (919) 541–5450; e-mail address: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

The supplementary information in this preamble is organized as follows:

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C. Where can I get a copy of this document?
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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
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I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by this proposed action include:

Category	NAICS code[1]	Examples of regulated entities
Industry	325181	Alkalis and Chlorine Manufacturing.
Federal government		Not affected.
State/local/Tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.7682 of subpart IIIII, National Emission Standards for Hazardous Air Pollutants (NESHAP): Mercury Emissions from Mercury Cell Chlor-Alkali (hereafter called the "2003 Mercury Cell NESHAP"). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA–HQ–OAR–2002–0017. 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.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the World Wide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed amendments by March 24, 2011, we will hold a public hearing on April 13, 2011. If you are interested in attending the public hearing, contact Ms. Virginia Hunt at (919) 541–0832 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

II. Background Information

A. What is the history of the Mercury Cell NESHAP?

On December 19, 2003, EPA promulgated the 2003 Mercury Cell NESHAP (40 CFR part 63, subpart IIIII, 68 FR 70904). This rule for mercury cell chlor-alkali plants implements section 112(d) of the Clean Air Act (CAA), which requires all categories and subcategories of major sources listed under section 112(c) to meet hazardous air pollutant emission standards reflecting the application of the maximum achievable control technology (MACT). Mercury cell chlor-alkali plants are a subcategory of the chlorine production source category listed under the authority of section 112(c)(1) of the CAA. In addition, mercury cell chlor-alkali plants are listed as an area source category under section 112(c)(3) and (k)(3)(B) of the CAA. The 2003 Mercury Cell NESHAP satisfied our requirement to issue 112(d) regulations under each of these listings (for mercury). The 2003 Mercury Cell NESHAP required both existing major and area sources to meet mercury emission limits on stack emission sources from both chlorine production and from the recovery of mercury from wastes and other scrap in mercury thermal recovery units. The 2003 Mercury Cell NESHAP also required the facilities to monitor and minimize fugitive mercury emissions from the cell room by conducting either daily work practices or work practices performed in response to high levels of mercury emissions determined from continuous mercury monitoring. The 2003 rule required facilities to comply with

applicable emission limitations and work practice requirements at all times, except during periods of SSM. Finally, the 2003 Mercury Cell NESHAP prohibited mercury emissions from new and reconstructed facilities.

B. What petitions were filed after promulgation of the Mercury Cell NESHAP in 2003?

On February 17, 2004, the NRDC submitted an administrative petition to EPA asking us to reconsider several aspects of the 2003 Mercury Cell NESHAP under CAA section 307(d)(7)(B). On the same day as the administrative petition, NRDC and the Sierra Club also filed a petition for judicial review of the 2003 Mercury Cell NESHAP in the U.S. Court of Appeals for the DC Circuit (Civ. No. 04–1048).

By a letter dated April 8, 2004, Jeffrey Holmstead, then-EPA Assistant Administrator for the Office of Air and Radiation, notified the NRDC that EPA had granted NRDC's petition for reconsideration of the 2003 Mercury Cell NESHAP. On July 20, 2004, the Court granted EPA's motion to hold the case for judicial review in abeyance pending EPA's action on the reconsideration of the 2003 Mercury Cell NESHAP.

C. What were the reconsideration decisions proposed in 2008?

On June 11, 2008 (73 FR 33257), EPA responded to NRDC's petition for reconsideration. In their petition, NRDC asked EPA to reconsider five issues: (1) The decision to develop a set of work practice requirements under CAA section 112(h) in lieu of a numeric emission limitation for cell rooms; (2) the decision to make the promulgated work practices optional for sources that choose to undertake continuous monitoring; (3) the decision to not require existing facilities to convert to a non-mercury chlorine manufacturing process; (4) the elimination of the previously applicable part 61 rule's 2,300 grams/day plant-wide emission limitation; and (5) the decision to create a subcategory of mercury cell chlor-alkali plants within the chlorine production category. In the 2008 proposal, EPA addressed each of these issues and proposed amendments where we determined them to be appropriate. Following are brief summaries of our reconsideration decisions. For a full explanation of these decisions and the rationale supporting them, please *see* the preamble for the June 11, 2008 proposal (73 FR 33258). The 2008 proposed amendments, which are being co-proposed in this action as Option 2, are discussed in section III.B of this document.

In addition, while not specifically listed as a major issue in their petition, the uncertainty related to the magnitude of fugitive mercury emissions was clearly a basis for much of NRDC's concern. This was also addressed in the 2008 proposal and is summarized below after the five specific issues cited by NRDC in the petition.

1. Emission Limitation for Cell Room

In its petition for reconsideration, NRDC stated that EPA failed to adequately justify that a numeric emission limitation was not feasible per the criteria prescribed in section 112(h) of the CAA. In our 2008 reconsideration, we concluded that it is not feasible to prescribe or enforce an emission limitation for fugitive emissions from the cell room. We maintained that fugitive emissions from mercury cells and associated equipment are a clear example of the type of situation to be addressed by the provisions of section 112(h). The various points which led to our opinion on the feasibility of establishing an emission standard were discussed in detail in the 2008 proposal (73 FR 33267–33271). In summary, consistent with CAA section 112(h), we believe that it is not feasible to prescribe or enforce an emission standard in this case. There are two independent bases for this conclusion. First, consistent with CAA section 112(h)(2)(A), we concluded that fugitive mercury emissions from a mercury cell chlor-alkali plant cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant. Second, consistent with CAA section 112(h)(2)(B), we established that the application of measurement technology to mercury cell rooms is not practicable due to technological and economic limitations.

2. Optional Work Practices

The 2003 Mercury Cell NESHAP requires facilities to follow a set of detailed work practices. The NESHAP also allows facilities to institute a cell room monitoring program to continuously monitor the mercury vapor concentration in the upper portion of each cell room as an alternative to these work practice standards. One of the objections raised by NRDC was that this provision backtracked from the Agency's proposed work practice standards. NRDC pointed out that in the development of the Mercury Cell NESHAP, EPA concluded that the housekeeping activities that facilities in the industry follow to comply with the part 61 mercury NESHAP (40 CFR 61, subpart E) represented the MACT floor and that requiring practices based upon the most detailed activities in the industry (*i.e.,* "beyond-the-floor" practices) was justified. But NRDC was concerned because the work practices in the 2003 Mercury Cell NESHAP were optional if facilities chose to do continuous monitoring and, therefore, this option would allow sources to avoid conducting activities that represent the MACT floor. NRDC argued that this was a violation of section 112(d)(3) of the CAA, which requires all facilities to meet the MACT floor.

As a result of our consideration of NRDC's point, we included proposed amendments in 2008 that would require that all plants institute a cell room monitoring program and comply with work practice standards (73 FR 33271–33272). As part of today's action, we are re-proposing the combination of work practices and cell room monitoring program as option 2. The specific proposed amendments are discussed in section III.B of this document.

3. Requiring Conversion to a Non-Mercury Chlorine Manufacturing Process

In its petition, NRDC argued that the 2003 Mercury Cell NESHAP does nothing to limit the use of mercury cell technology by existing chlor-alkali plants, and that the Agency ignored a known technique for reducing mercury emissions from this industry, namely, conversion to non-mercury processes. According to NRDC, requiring the industry to convert to a non-mercury process is cost-justified and would provide significant non-air quality benefits. In response to NRDC's concerns that we did not evaluate the conversion of mercury cell chlor-alkali production plants to non-mercury technology, we performed an analysis to estimate the capital and annual costs of this action. In performing the analysis, we used information from all readily available sources of information. Based on the results of this analysis, we proposed to reject the option of requiring conversion to non-mercury technology because of the high cost impact this forced conversion would impose on the facilities in the industry (73 FR 33274–33275).

Following the 2008 proposal, one commenter provided detailed comments on our proposed decision to not require existing facilities to convert to a non-mercury chlorine manufacturing process. In addition to comments on the EPA cost analysis described in our 2008 proposal, the commenter provided a report to support its comments. We

reviewed these comments, examined the commenter's report, and concluded that our cost analysis could be improved. Therefore, we incorporated some aspects of the commenter's cost analysis, and gathered additional cost information. The results of our revised analyses, and our consideration of the policy and legal comments made by the commenter regarding the benefits of non-mercury technology to produce chlorine, provided the impetus for the non-mercury mercury option being proposed today as Option 1. Details of this proposed option are provided in section III.A of this document.

4. Elimination of Part 61 NESHAP Numeric Limit

NRDC stated that EPA illegally eliminated the 2,300 g/day limit on plant-wide mercury emissions that existed under the part 61 Mercury NESHAP. Upon reconsideration, we disagreed with NRDC's argument. We determined that the plant-wide emission limit from the part 61 Mercury NESHAP was a standard to which no mercury cell facility had ever demonstrated compliance by way of emissions testing, that it is not an enforceable standard today, and, more importantly, and that it did not reflect the MACT level of emissions control required under CAA section 112(d)(3)(B). Therefore, we concluded that we did not unlawfully remove any actual requirement of the part 61 Mercury NESHAP. Instead, the 2003 Mercury Cell NESHAP adopted a set of MACT-level work practice requirements under section 112(h) that are more stringent in terms of controlling fugitive mercury emissions than was allowed in the part 61 NESHAP. Details on this conclusion were provided on pages 73 FR 33270 and 33271 of the June 11, 2008 proposal.

5. Mercury Cell Chlor-Alkali Subcategory

As stated in the preamble to the final 2003 Mercury Cell NESHAP (68 FR 70905), we divided the chlorine production source category into two subcategories: (1) Mercury cell chlor-alkali plants and (2) chlorine production plants that do not rely upon mercury cells for chlorine production. In December 2003 (68 FR 70949), we issued our final decision to delete the subcategory of the chlorine production source category for chlorine production plants that do not utilize mercury cells to produce chlorine and caustic. This action was made under our authority in CAA section 112(c)(9)(B)(ii), and was not challenged in a petition for judicial review. Nor did anyone ask us to reconsider that action pursuant to CAA section 307(d)(7)(B). The objection raised by NRDC in its petition for reconsideration of the 2003 Mercury Cell NESHAP was that it was not appropriate to create a mercury cell chlor-alkali plants subcategory. According to NRDC, if the MACT floor for mercury emissions was determined for the chlorine production source category as a whole, the best-performing 12 percent of sources in the category would be mercury-free. In our 2008 proposal (73 FR 33273–33274), we explained that EPA has a long history of using subcategorization to appropriately differentiate between types of emissions and/or types of operations when analyzing whether air pollution control technology is feasible for groups of sources. Upon reconsideration of this situation for mercury cell chlor-alkali plants, we concluded that our earlier decision to create the mercury cell chlor-alkali plant subcategory was sound.

6. Magnitude of Fugitive Mercury Emissions

Prior to 2008, the uncertainty associated with fugitive mercury emissions from mercury cell chlor-alkali plants had long been an issue. Few studies had been conducted to measure these fugitive mercury emissions, and the studies that had been conducted were short-term and did not account for a range of operating and maintenance conditions. For around 30 years, mercury cell chlor-alkali plants had reported fugitive mercury emissions of 1,300 grams per day (g/day), which equates to around 0.5 tons per year per plant. These estimates were based on two limited studies conducted by EPA in the early 1970's.

The sensitivity and concern over the actual levels of fugitive mercury emissions from the cell rooms was exacerbated by the inability of the industry to fully account for all the mercury that was added to the cells. In 2000, there were approximately 65 tons of mercury unaccounted for at the 12 mercury cell plants in operation at that time. This discrepancy was based on the difference between the amount of mercury used, as reported in the Chlorine Institute's 2001 annual report to EPA's Binational Toxics Strategy Mercury Workgroup,[a] and the amount of mercury released to all media, as reported in the 2000 Toxics Release Inventory, or TRI (the EPA requires industrial facilities to annually report on releases and transfers of certain toxic chemicals to a public database known as the TRI.) While industry representatives provided explanations for this discrepancy, they could not fully substantiate their theories. NRDC maintained that this "missing" mercury was being emitted as fugitive emissions.

We recognized that the body of fugitive mercury emissions data could be improved. Therefore, as part of our reconsideration of the 2003 Mercury Cell NESHAP, we collected additional information on fugitive mercury emissions from mercury cell chlor-alkali plants. The primary purpose of this effort was to address whether the fugitive emissions from a mercury cell chlor-alkali plant are on the order of magnitude of the historical assumption of 1,300 g/day, corresponding to 0.5 tons per year (tpy) per plant, or an order of magnitude higher as estimated by NRDC.

Consequently, as part of our reconsideration efforts leading the 2008 proposal, we sponsored a test program to address the issue of the magnitude of the fugitive mercury emissions at mercury cell chlor-alkali plants. In addition to this EPA test program, we also collected mercury emissions data from the continuous mercury monitoring systems installed at three mercury cell plants.

The daily fugitive mercury emission rates extrapolated from these data sets ranged from around 20 to 1,300 g/day per facility. The average daily emission rates ranged from around 420 g/day to just under 500 g/day per facility, with the mean of these average values being slightly less than 450 g/day per facility. Therefore, the information we obtained in the almost one million dollar study of fugitive emissions from mercury cell chlor-alkali plants shows that fugitive emissions are on the order of magnitude of the historical assumption of 1,300 g/day or less. There was no evidence obtained during any of the studies that indicated that fugitive mercury emissions were at levels higher than 1,300 g/day. All of the studies that produced these data were of sufficient duration to encompass all types of maintenance activities. Further, the length of these studies was also sufficient to include emissions from a variety of process upsets, such as: Liquid mercury spills, leaking cells and other process equipment, and other process upsets.

We also note that since 2008, the mercury cell plants with continuous monitoring systems and methods to estimate the flow rates have reported even lower mercury emissions than

[a] Binational Toxics Strategy Mercury Workgroup—Reducing Mercury in the Great Lakes Region. U.S. Environmental Protection Agency. *http://www.epa.gov/reg5oair/mercury/reducing.html#regulation.*

those reported in the 2008 proposal. In 2008, these plants reported fugitive mercury emissions averaging around 225 g/day/plant.

D. What current legislation is related to this action?

There is also U.S. legislation, both recently enacted and proposed, that has or will have an impact on these mercury chlor-alkali facilities. On October 14, 2008, President Bush signed the Mercury Export Ban Act of 2008 into law. This law bans U.S. export of elemental mercury (effective in 2013), requires the Department of Energy (DOE) to designate and manage a long-term storage facility for elemental mercury, and prohibits the transfer of elemental mercury by Federal agencies.

Both houses of Congress are currently considering legislation that, if enacted, would affect this industry (S. 1428 and H.R. 2190). These bills would amend the Toxic Substances Control Act to prohibit the use of mercury at chlor-alkali facilities. The House bill would require the facilities to cease using mercury by 2013 if the plant chooses to close or by 2015 if the plant chooses to convert to non-mercury. If this legislation passes Congress and is signed by the President into law, we will evaluate the appropriate action for EPA in light of the scope and impact of the law.

III. Summary of Proposed Amendments

In today's action, we are proposing two options for amending the Mercury Cell NESHAP. The first option (non-mercury technology option) would encourage the conversion to non-mercury technology by requiring the elimination of mercury emissions. The second option (enhanced work practices option) would require improvements in the work practice standards to reduce fugitive emissions from the cell room including the requirement that every facility institute a cell room monitoring program and implement detailed work practices. These options, along with the estimated impacts of each, are described below in sections III.A and III.B. Also included is rationale for the selection of each option.

In addition to these options, we are also proposing amendments that would apply regardless of which option we select. These amendments are described in section III.C.

A. What is the non-mercury technology option (Option 1)?

1. Summary of Non-Mercury Technology Option

This proposed option would amend the 2003 Mercury Cell NESHAP by prohibiting mercury emissions from existing mercury cell chlor-alkali plants. This would make the standard for existing sources the same as the current standard for new and reconstructed sources, which is codified at 40 CFR 63.8190(a)(1).

Since we believe it is improbable that a mercury cell chlor-alkali plant can be operated without mercury emissions, we believe that this proposal would effectively require existing mercury cell chlor-alkali plants either to convert to a non-mercury technology or to cease production of chlorine with their current mercury cell production methods. However, if there are circumstances where the elimination of mercury emissions from an operating mercury cell plant could be achieved, we are interested in data and supporting information regarding technologies that would eliminate mercury emissions from an operating mercury cell facility.

This proposed option would provide a three-year period from the date the final rule is published in the **Federal Register** to comply. To demonstrate compliance, each owner or operator would have to submit a report certifying that all mercury emissions have been eliminated permanently. This report would have to be submitted no later than 120 days following the applicable compliance date.

2. Technical Information and Analyses for the non-Mercury Technology Option

a. Background on the 2008 Proposal and Costs Analysis

Section 112(d)(2) of the CAA provides that emission standards for new or existing sources of hazardous air pollutants (HAP) shall require the maximum degree of reduction in emissions (including a prohibition on such emissions, where achievable) that EPA, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable through application of measures, processes, methods, systems or techniques. These may include, but are not limited to, measures which (A) Reduce the volume of or eliminate emissions through process changes, substitution of materials or other modifications; (B) enclose systems or processes to eliminate emissions; (C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emission point; (D) are design, equipment, work practice, or operational standards; or (E) are a combination of the above.

One of the claims presented in NRDC's petition for reconsideration of the 2003 Mercury Cell NESHAP was that EPA had not adequately considered non-mercury technology as a "beyond-the-floor" MACT control measure for existing sources in the original rulemaking for the Mercury Cell NESHAP (*see* section II.D.3). Further, NRDC claimed that the cost-effectiveness of such a requirement, in terms of the annualized costs of control per pound of mercury eliminated, would be less than EPA previously indicated was warranted for mercury emissions from the mercury cell subcategory.

In response to this comment, we performed an analysis in 2008 to determine the capital and annual costs of requiring non-mercury technology (Docket Item EPA–HQ–OAR–2002–0017–0088). Specifically, this analysis estimated the costs and the cost-effectiveness of converting the existing mercury cell chlor-alkali plants to membrane cells.

In a chlor-alkali process, an electric current is passed through a salt solution or brine (sodium chloride or potassium chloride), causing the dissociation of salt to produce chlorine gas and an alkaline solution (sodium hydroxide or potassium hydroxide). Hydrogen gas is also produced as a by-product. This dissociation occurs in chlor-alkali "cells," where the chloride ions stripped from the brine flow to the anode to form the chlorine product, and the sodium/potassium ions flow to the cathode, where they form the hydroxide product and hydrogen. In a mercury cell, the cathode is a flowing layer of liquid mercury. The sodium/potassium ions form an amalgam with the mercury, which is routed to a decomposer. In the decomposer, the amalgam is reacted with water to form the hydroxide product and hydrogen. The mercury is then recycled.

In a membrane process, a polymer membrane is used to separate the anode products from the cathode products. The chloride ions (at the anode) and the hydrogen (at the cathode) are kept apart by this membrane, which allows the sodium ions to pass into the cathodic compartment and react to form the hydroxide.

Conversion from mercury cells to membrane cells is technically possible at all existing mercury cell chlor-alkali plants, although the amount of significant changes will vary for each individual situation. There are parts of the mercury cell plant that could be re-used after conversion to the membrane cells. It could be possible to use the existing cell room building for the new

membrane cells, provided that the building is in good condition. However, constructing a new membrane cell room building would reduce the production losses as the mercury cells could continue to operate longer throughout the conversion process. Other equipment and processes that possibly could be retained include the rectifiers, the hydrogen treatment system, and the chlorine compression and liquefaction process.

The mercury cells themselves (and associated decomposers) would have to be replaced by membrane cells. Membrane cells need purer brine than mercury cells, so a completely new brine purification system would likely be needed. Other equipment that would commonly need to be totally replaced include the sodium/potassium hydroxide concentration unit and evaporation system, the chlorine gas drying and chlorine gas absorption units, the power supply unit (excluding the rectifiers), pumps, instruments, and much of the piping.

In performing the cost analysis, we used data from readily-available sources of information. In our 2008 proposal, we estimated that the average cost-effectiveness associated with conversion to non-mercury technology would be approximately $14,000 per pound of mercury emissions eliminated. Further, our 2008 analysis estimated the average capital cost of conversion for one mercury cell chlor-alkali facility in the U.S. to be approximately $68 million per plant. The average annualized facility costs for this conversion were estimated to be approximately $7.5 million per plant. Nationwide, the capital cost was estimated to be nearly $340 million and the annual costs around $38 million for the five facilities in operation at the time. We estimated that this cost impact would be approximately 11 percent of revenues. As a result of these analyses, we proposed in 2008 to reject conversion to non-mercury technology as a beyond-the-floor control requirement.

b. Summary of Comments Received on the 2008 Cost Analysis

One environmental organization disagreed with both our technical analysis and resulting conclusions in the 2008 proposal, and claimed that the switch to non-mercury technology would be economical. The commenter said that, in the 2008 analysis, EPA considered only the costs associated with the conversion, without considering the net cost or economic benefit. The commenter maintained that it is likely that any plant that converts will experience substantial benefits, including an increase in energy efficiency between 25 and 35 percent. The commenter claimed that this increased energy efficiency could amount to substantial savings. Furthermore, the commenter pointed out that membrane cells are smaller than mercury cells, which would allow plants to increase their chlorine capacity, leading to increased sales and additional energy savings due to the additional capacity. The commenter submitted a report that it prepared which provided individualized cost analyses for each of the remaining mercury cell chlor-alkali plants (Docket Item EPA–HQ–OAR–2002–0017–0094.3). According to the commenter, its report proves that conversion would pay for the majority of its cost in five years. Thus, the commenter concluded that EPA's proposal was incorrect to suppose a "high cost impact" of conversion to non-mercury technology, and claimed that EPA should heed the evidence that conversion is not only economically feasible but beneficial and mandate conversion to non-mercury technology as a beyond-the-floor control requirement.

c. 2009 Revised Cost Analyses

In the second quarter of 2009, we performed a revised beyond-the-floor cost analysis to address comments received on the 2008 proposed amendments described above. The impacts, particularly the savings and benefits, of a forced conversion to membrane cells might not be universally applicable since the conditions and benefits are not the same at every facility. We do agree, however, that these facilities would achieve some savings associated with lower electricity and the elimination of environmental compliance costs for water treatment, waste disposal, and mercury monitoring, and that items should be added to the EPA cost analyses. Therefore, without assuming that a uniform energy savings would accrue to every facility currently operating, we updated our analysis to consider the energy costs savings. We also amended our analysis to include savings from the elimination of waste treatment, waste disposal, and mercury monitoring. On June 5, 2009, we developed a revised and updated analysis of conversion costs for the industry. This analysis was posted as a memorandum in the docket (Docket Item EPA–HQ–OAR–2002–0017–0098).

Subsequent to the posting of the June 5, 2009, memorandum, industry representatives provided comments on the revised analysis (Docket Items EPA–HQ–OAR–2002–0017–0100, 0101, 0102, and 0103). One of the major comments raised by industry representatives on our revised analysis regarded the 2006 mercury emission levels used to estimate the cost-effectiveness of conversion to non-mercury technology. The industry representatives stated that these data reflected emission levels considerably higher than their more recently reported emissions. In addition, the industry representatives stated that the capital and annual costs in our 2008 analysis were underestimated. The industry representatives also believed that the annual energy savings were overstated because these savings did not take into account the additional energy and fuel that would be needed to concentrate the caustic by-product obtained using membrane cells, which is produced at 33 percent purity, to the 50 percent purity obtained using the mercury cell process. The industry representatives also commented that the June 2009 cost analysis: (1) Underestimated the mercury storage costs; (2) used an interest rate that was in practicality too low for calculating the capital recovery factor; (3) erroneously used information from a European study to estimate the savings due to the elimination of the mercury process that were not applicable to the U.S.; and (4) did not consider decommissioning costs.

Consequently, we considered the industry comments and, in instances where specific relevant data were provided or available, we incorporated the information into another revised cost analysis dated September 15, 2009 (Docket Item EPA–HQ–OAR–2002–0017–0105). The September 2009 updated cost analysis for conversion to membrane technology estimated that the costs to convert the four remaining mercury cell plants to be nearly $336 million in total capital costs and almost $36 million per year in total annual costs, considering electricity and other savings. The cost-effectiveness of conversion based on this September 2009 analysis was about $66,000 per pound of mercury.

In this analysis, we did not add certain highly variable costs mentioned by the industry commenter that could potentially be incurred by a plant when making a change to non-mercury technology. These variable costs include losses in production, building replacement, plant decommissioning, and many others that are likely to be highly variable from facility to facility. We believe that the magnitude of these costs, although very likely to occur for most facilities, would depend on factors such as the condition of the existing buildings, available space on the facility

site to erect a new cell room building to avoid production losses, and possibly other unknown factors. We also received comments on the revised 2009 cost analyses from the same environmental organization that provided comments on the 2008 cost analysis. The complete comments can be found in the docket (Docket EPA–HQ–OAR–2002–0017). The environmental organization commenter stated that the capital costs estimated by EPA are too high and the EPA analysis did not uniformly account for expansion during conversion. In addition, the commenter stated that the regression formula of cost vs. capacity used to establish an equation is incorrect since there is no relationship between capital costs and capacity when considering the full set of relevant data rather than just recent U.S. facilities. Also, the commenter stated that the capital costs should be annualized over a longer period than the 15 years used in the analysis since 30 years is a more likely useful life.

The environmental commenter also made the following points: The energy savings estimated by EPA are too low, since higher reductions in electricity consumption are common place; the EPA cost estimate for producing steam double-counted the cost associated with concentrating caustic and did not account for the fact the steam could be obtained on-site without expense; the cost savings for environmental compliance avoided are underestimated; and the decommissioning costs are already included in estimates of conversion since many factories include the cost of dismantling and decommission in the reported cost of conversion.

In addition, the commenter recommended that in evaluating the costs, EPA should use the average sales per establishment instead of the average sales per ton of chlorine capacity because the commenter believes that the latter term grossly underestimates sales. The commenter also stated that societal costs of conversion to non-mercury technology should be considered (Docket Item EPA–HQ–OAR–2002–0017–0104). The commenter also believed that the industry-supplied emission estimates are not reliable and are likely underestimated, thus overestimating the costs per pound of mercury emissions prevented. Finally, the commenter stated that EPA's overall conclusion does not reflect the real world since over 100 plants have made the conversion globally and at least five chlor-alkali facilities expected or received a complete repayment from their investment within five years.

d. Revised Cost Analysis for This Proposal

Many of the comments we received on the September 2009 cost analysis were considered and used to estimate costs that represent the outcome of a potential conversion to non-mercury technology. In this revised analysis, we recognize that there are significant uncertainties in estimating these costs, and consider ranges of the potential costs (and savings) associated with each cost element. For each element, we do select a "best estimate" to allow the estimation of capital and annual costs of conversion for each facility. The results of this analysis are summarized below in section III.A.2.a of this document, and a memorandum that documents the details of this cost analysis can be found in the docket. We are specifically requesting comment on our analysis, along with additional facility-specific data, to allow a refinement of the analysis.

3. Estimated Impacts of the Non-Mercury Technology Option

a. Environmental and Energy Impacts

We estimate that the total mercury emissions from the four mercury cell operating facilities to be around 640 pounds per year. The non-mercury technology option would reduce mercury emissions by this amount. These four facilities reported almost 2,000 additional pounds per year of on-site and off-site mercury releases to non-air media. These releases, which are primarily in the form of hazardous wastes, would be eliminated in the longer term, with consequential benefits for non-air quality related health and environmental values. The potential problems associated with the handling and continuous management of over 1,200 tons of virgin mercury that is used in the cells at these four chlor-alkali plants would also be eliminated. In addition, approximately two tons of this mercury was reported by the industry as "unaccounted" in 2008. This non-mercury technology option would eliminate the unaccounted mercury as well.

The membrane cell chlor-alkali process requires less energy than the mercury cell process. Therefore, assuming that all four existing mercury cell chlor-alkali plants convert to membrane cells, there would be a savings in energy. We estimate that this savings would be around 350,000 megawatt hours per year, which is approximately equivalent to the energy produced annually by a 40 megawatt power plant. The emission reductions associated with this reduced electricity generation are estimated to be 68 tons per year of fine particulate matter ($PM_{2.5}$), 5 tons per year of volatile organic compounds (VOC), 0.1 tons per year of ammonia (NH_3) 0.008 tons per year of mercury, and 287,000 tons per year of carbon dioxide (CO_2). Since nitrogen oxide (NOx) and sulfur dioxide (SO_2) are covered by capped emissions trading programs, we are only estimating $PM_{2.5}$ emission reductions from reduced electricity demand.

In the short term, the conversion of these facilities would result in the need to dispose of mercury-contaminated wastes. While there is considerable uncertainty in quantifying the amount of these wastes, we estimate that there could be around 7,000 cubic meters of mercury contaminated waste generated that could contain around 6 tons of mercury.

As stated above, over 1,200 tons of virgin or process mercury from the facilities would need to be dealt with whether the facilities close or convert to non-mercury technology. The Mercury Export Ban Act of 2008, discussed earlier, would prohibit this mercury from being exported. Therefore, this mercury would need to be stored or sold domestically. Since mercury is a hazardous substance, it cannot be stored without a permit; hence, DOE is planning to build a Federal facility to accommodate the excess mercury that results from the export ban.

b. Cost Impacts

The estimated costs for the non-mercury technology option, assuming that all four currently operating mercury cell chlor-alkali plants convert to membrane cell technology, include total capital costs of approximately $300 million dollars, with individual plant capital costs ranging from a low of $28 million to a high of approximately $160 million. Our analysis does show that, in the hypothetical situation that a single plant could incur the lowest possible costs while also realizing the highest possible energy and other savings, there could be an overall cost savings in the conversion from mercury cells to membrane cells. However, we do not believe that this scenario is realistic. Using more conservative assumptions, our best estimate is that the average annual costs would be between $800,000 and $7 million per year per plant. The total annual costs are estimated to be $13 million per year. Based on these costs and the estimated mercury emissions for each facility, the cost-effectiveness, in terms of annualized costs per pound of mercury eliminated, is approximately $20,000 per pound for the industry, with a range

of around $13,000 to $31,000 per pound for the individual facilities.

c. Economic Impacts

In addition to cost analyses, we also conducted an economic analysis of the impacts of the option to require non-mercury technology. A regulatory impact analysis (RIA) was performed for this non-mercury technology option. A report that documents the EIA methods and results can be found in the docket (EPA–HQ–OAR–2002–0017).

Although individual plant information would be the best method to assess the true economic impacts of the non-mercury technology option, detailed information for this industry was not publicly available. As a result, we relied on parent company information provided in company annual reports (*e.g.,* form 10–K), local press and industry trade publications, and company Web sites.

There are many aspects of the cost estimate for conversion that are unknown or difficult to assess. While we believe that we have evaluated the conversion cost information available to us at the time of this action, the true costs may vary considerably. However, variation in engineering costs is not expected to cause a significant difference in the general conclusions of the RIA.

We performed an analysis that compared the annual conversion costs to sales (cost to sales ratio, or CSR). We estimated that the CSR of ASHTA, the one small business in this industry, would range from one to two percent using the costs presented in this proposal. The other three plants are owned by large parent companies with significant company-wide sales. As a result, the CSRs for these large parent companies are below one percent. When single plant sales were considered, the CSRs for the mercury cell chlor-alkali plants owned by large parent companies ranged from 4 to 9 percent.

We also analyzed industry profitability effects by comparing the annual conversion costs to reported industry margins for a representative electrochemical unit. This analysis confirms the results of the sales comparisons that plant conversion costs will likely have an economically significant effect. Conversion costs could reduce the margins by 10 to 20 percent.

This non-mercury technology option would force owners of mercury chlor-alkali plants to make an investment decision based on the costs of conversion as opposed to the future benefits of the conversion. This non-mercury technology option could lead to plant shutdowns that would involve adjustment costs for people working at the affected plants. Affected plants may also have strong links with other firms or downstream markets; as a result, secondary consequences of the regulation are important to consider. We are interested in receiving comments related to the downstream impacts of potential mercury cell plant shutdowns. In particular, we are interested in the impact on the potassium carbonate market and the potential impact on the competitiveness of the potassium hydroxide market.

Many owners have converted from mercury cell chlor-alkali technologies in Europe and the U.S., while other mercury cell chlor-alkali plant owners have concluded the investment decision was currently not in their company's interest given their assessment of future economic conditions, and have shutdown their mercury cell chlor-alkali plants instead. Since 2003, three U.S. mercury cell chlor-alkali facilities have closed and three have converted. Specifically, the Occidental Chemical mercury cell chlor-alkali facilities in Delaware City, Delaware, Muscle Shoals, Alabama, and Deer Park, Texas, have closed; while the PPG facility in Lake Charles, Louisiana, the ERCO facility in Port Edwards, Wisconsin, and the Pioneer chlor-alkali facility (now owned by Olin) in St. Gabriel, Louisiana, have converted to membrane cells.

We do not have sufficient data to predict whether individual companies would choose to convert or close the affected mercury cell chlor-alkali plants. However, the data obtained in this study suggests that plant closure may be a preferred alternative to meet the requirements of the non-mercury technology option for one or more of the mercury cell chlor-alkali plants.

As noted above, individual plant information was not available to perform a refined analysis of whether these mercury cell plants would likely convert to non-mercury technology or close. We are specifically requesting comment on our analysis, along with facility-specific data, to allow a refinement of the analysis for this non-mercury technology option.

d. Benefits

Mercury is a highly neurotoxic contaminant that enters the food web as a methylated compound, methylmercury (U.S. EPA, 2008c). The contaminant is concentrated in higher trophic levels, including fish eaten by humans. Mercury is emitted to the air from various man-made and natural sources. These emissions transport through the atmosphere and eventually deposit to land or water bodies. This deposition can occur locally, regionally, or globally, depending on the form of mercury emitted and other factors such as the weather. The form of mercury emitted from these sources is estimated to be about 98 percent elemental and two percent divalent mercury. Gaseous elemental mercury can be transported very long distances, even globally, to regions far from the emissions source (becoming part of the global "pool") before deposition occurs. Inorganic ionic (divalent) mercury has a shorter atmospheric lifetime and can deposit to land or water bodies closer to the emissions source. Furthermore, elemental mercury in the atmosphere can undergo transformation into ionic mercury, providing a significant pathway for deposition of emitted elemental mercury.

This source category emitted about 640 pounds of mercury in the air in 2008 in the U.S. Based on the EPA's National Emission Inventory, about 103 tons of mercury were emitted from all anthropogenic sources in the U.S. in 2005. Moreover, the United Nations has estimated that about 2,100 tons of mercury were emitted worldwide by anthropogenic sources in 2005. We believe that total mercury emissions in the U.S. and globally in 2008 were about the same magnitude in 2005. Therefore, we estimate that in 2008, these sources emitted about 0.3 percent of the total anthropogenic mercury emissions in the U.S. and about 0.02 percent of the global emissions. Overall, the non-mercury technology option (Option 1) would directly reduce mercury emissions by about 640 pounds per year from current levels as well as an estimated 16 pounds per year indirectly through reduced electricity generation, and, therefore, contribute to reductions in mercury exposures and health effects. Due to data, time, and resource limitations, we were unable to model mercury dispersion, deposition, methylation, bioaccumulation in fish tissue, and human consumption of mercury-contaminated fish that would be needed in order to estimate the human health benefits from reducing mercury emissions.

Potential exposure routes to mercury emissions include both direct inhalation and consumption of fish containing methylmercury. For elemental mercury, inhalation is the most direct exposure route of potential concern. Effects on the nervous system appear to be the most sensitive toxicological endpoint and can include tremors, nervousness, insomnia, neuromuscular changes (such as weakness, muscle atrophy, and muscle

twitching), and headaches.[b] In the U.S., the primary route of human exposure to mercury emissions from industrial sources is generally indirectly through the consumption of fish containing methylmercury. As described above, mercury that has been emitted to the air eventually settles into water bodies or onto land where it can either move directly or be leached into waterbodies. Once deposited, certain microorganisms can change it into methylmercury, a highly toxic form that builds up in fish, shellfish and animals that eat fish. Consumption of fish and shellfish are the main sources of methylmercury exposure to humans. Methylmercury builds up more in some types of fish and shellfish than in others. The levels of methylmercury in fish and shellfish vary widely depending on what they eat, how long they live, and how high they are in the food chain. Most fish, including ocean species and local freshwater fish, contain some methylmercury. For example, in recent studies by EPA and the U.S. Geological Survey (USGS) of fish tissues, every fish sampled from 291 streams across the country contained some methylmercury (Scudder, 2009).[c]

The majority of fish consumed in the U.S. are ocean species. The methylmercury concentrations in ocean fish species are primarily influenced by the global mercury pool. However, the methylmercury found in local fish can be due, at least partly, to mercury emissions from local sources. Research shows that most people's fish consumption does not cause a mercury-related health concern. However, certain people may be at higher risk because of their routinely high consumption of fish (*e.g.,* Tribal and other subsistence fishers and their families who rely heavily on fish for a substantial part of their diet). It has been demonstrated that high levels of methylmercury in the bloodstream of unborn babies and young children may harm the developing nervous system, making the child less able to think and learn. Moreover, mercury exposure at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages.

Several studies suggest that the methylmercury content of fish may reduce these cardio-protective effects of fish consumption. Some of these studies also suggest that methylmercury may cause adverse effects to the cardiovascular system. For example, the National Research Council (NRC) (2000) review of the literature concerning methylmercury health effects took note of two epidemiological studies that found an association between dietary exposure to methylmercury and adverse cardiovascular effects.[d] Moreover, in a study of 1,833 males in Finland aged 42 to 60 years, Solonen *et al.* (1995) observed a relationship between methylmercury exposure via fish consumption and acute myocardial infarction (AMI or heart attacks), coronary heart disease, cardiovascular disease, and all-cause mortality.[e] The NRC also noted a study of 917 seven year old children in the Faroe Islands, whose initial exposure to methylmercury was *in utero* although post natal exposures may have occurred as well. At seven years of age, these children exhibited an increase in blood pressure and a decrease in heart rate variability.[f] Based on these and other studies, NRC concluded in 2000 that, while "the data base is not as extensive for cardiovascular effects as it is for other end points (*i.e.,* neurologic effects) the cardiovascular system appears to be a target for methylmercury toxicity."[g]

Since publication of the NRC report, there have been some 30 published papers presenting the findings of studies that have examined the possible cardiovascular effects of methylmercury exposure. These studies include epidemiological, toxicological, and toxicokinetic investigations. Over a dozen review papers have also been published. If there is a causal relationship between methylmercury exposure and adverse cardiovascular effects, then reducing exposure to methylmercury would result in public health benefits from reduced cardiovascular effects.

In early 2010, EPA sponsored a workshop in which a group of experts were asked to assess the plausibility of a causal relationship between methylmercury exposure and cardiovascular health effects and to advise EPA on methodologies for estimating population level cardiovascular health impacts of reduced methylmercury exposure. The report from that workshop is in preparation.

The primary benefit of the non-mercury technology option would be the reduction of mercury emissions from these sources, as discussed above. Due to data and resource limitations, we were unable to monetize the benefits associated with reducing mercury emissions for this non-mercury technology option. However, we estimate the monetized energy co-benefits of the non-mercury technology option to be $22 million to $43 million (2007$, 3 percent discount rate) in the implementation year (2013). The monetized co-benefits of the regulatory action at a 7 percent discount rate are $14 million to $33 million (2007$). Higher or lower co-benefits estimates are plausible using other assumptions.[h] A summary of the monetized energy co-benefits estimates at discount rates of 3 percent and 7 percent is in Table 1 of this preamble.

TABLE 1—SUMMARY OF THE MONETIZED CO-BENEFITS ESTIMATES FOR THE PROPOSED NON-MERCURY TECHNOLOGY OPTION IN 2013 (MILLIONS OF 2007$) [1]

Pollutant	Estimated emission reductions	Monetized co-benefits (3% Discount rate)	Monetized co-benefits (7% Discount rate)
Mercury [2]	656 pounds per year	N/A	N/A
Direct $PM_{2.5}$	68 tons per year	$15 to $37	$14 to $33

[b] Integrated Risk Information System (IRIS). U.S. Environmental Protection Agency. *http://www.epa.gov/ncea/iris/subst/0370.htm.*

[c] Scudder, B.C., Chasar, L.C., Wentz, D.A., Bauch, N.J., Brigham, M.E., Moran, P.W., and Krabbenhoft, D.P. 2009. Mercury in fish, bed sediment, and water from streams across the United States, 1998–2005: U.S. Geological Survey Scientific Investigations Report 2009–5109, p. 74.

[d] National Research Council (NRC). 2000. Toxicological Effects of Methylmercury. Committee on the Toxicological Effects of Methylmercury, Board on Environmental Studies and Toxicology. National Academies Press. Washington, DC. pp. 168–173.

[e] Salonen, J.T., Seppanen, K. Nyyssonen *et al.* 1995. "Intake of mercury from fish lipid peroxidation, and the risk of myocardial infarction and coronary, cardiovascular and any death in Eastern Finnish men." Circulation, 91 (3):645–655.

[f] Sorensen, N, K. Murata, E. Budtz-Jorgensen, P. Weihe, and Grandjean, P., 1999. "Prenatal Methylmercury Exposure as a Cardiovascular Risk Factor at Seven Years of Age", Epidemiology, pp. 370–375.

[g] National Research Council (NRC). 2000. Toxicological Effects of Methylmercury. Committee on the Toxicological Effects of Methylmercury, Board on Environmental Studies and Toxicology. National Academies Press. Washington, DC. p. 229.

[h] Roman *et al,* 2008. "Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S." *Environ Sci Technol,* 42, 7, 2268–2274.

TABLE 1—SUMMARY OF THE MONETIZED CO-BENEFITS ESTIMATES FOR THE PROPOSED NON-MERCURY TECHNOLOGY OPTION IN 2013 (MILLIONS OF 2007$) [1]—Continued

Pollutant	Estimated emission reductions	Monetized co-benefits (3% Discount rate)	Monetized co-benefits (7% Discount rate)
CO_2 [3]	287,000 tons per year	$6.5	$6.5
Grand Total		$22 to $43	$21 to $40

[1] All estimates are for the implementation year (2013), and are rounded to two significant figures so numbers may not sum across rows. All fine particles are assumed to have equivalent health effects.

[2] Includes an estimated 16 pounds per year of mercury emission reductions from energy savings.

[3] CO_2-related benefits were calculated using the social cost of carbon (SCC), which is discussed further in the RIA. The net present value of reduced CO_2 emissions is calculated differently than other benefits. The same discount rate used to discount the value of damages from future emissions (SCC at 5, 3, 2.5 percent) is used to calculate net present value of SCC for internal consistency. This table shows monetized CO_2 co-benefits at discount rates of 3 and 7 percent that were calculated using the global average SCC estimate at a 3 percent discount rate because the interagency workgroup on this topic deemed this marginal value to be the central value. In the RIA, we also provide the monetized CO_2 co-benefits using discount rates of 5 percent (average), 2.5 percent (average), and 3 percent (95th percentile).

These co-benefits estimates represent the total monetized human health benefits for populations exposed to less $PM_{2.5}$ in 2013 from emission reductions due to the decreased electricity demand. These co-estimates are calculated as the sum of the monetized value of avoided premature mortality and morbidity associated with reducing a ton of $PM_{2.5}$ precursor emissions. To estimate the human health benefits derived from reducing $PM_{2.5}$ precursor emissions, we used the general approach and methodology laid out in Fann, Fulcher, and Hubbell (2009).[i]

To generate the benefit-per-ton estimates, we used a model to convert emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors into changes in ambient $PM_{2.5}$ levels and another model to estimate the changes in human health associated with that change in air quality. The $PM_{2.5}$ benefit-per-ton estimates used for this rule assume a certain geographic distribution of emissions reductions, population density, meteorology, exposure and baseline health incidence rates. To the extent that these attributes differ greatly from those of the Mercury Chlor Alkali facilities, the use of these $/ton values in combination with emission changes at MCL facilities to estimate $PM_{2.5}$ co-benefits may lead to higher or lower benefit estimates than if these co-benefits were estimated using site-specific data. Finally, the monetized health co-benefits were divided by the emissions reductions to create the benefit-per-ton estimates. These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type.

Direct PM is the only $PM_{2.5}$ precursor we are estimating for the non-mercury technology option. For context, it is important to note that the magnitude of the PM co-benefits is largely driven by the concentration response function for premature mortality. Experts have advised EPA to consider a variety of assumptions, including estimates based both on empirical (epidemiological) studies and judgments elicited from scientific experts, to characterize the uncertainty in the relationship between $PM_{2.5}$ concentrations and premature mortality. For this non-mercury technology option we cite two key empirical studies, one based on the American Cancer Society cohort study [j] and the extended Six Cities cohort study.[k] In the RIA for this non-mercury technology option, which is available in the docket, we also include co-benefits estimates derived from expert judgments and other assumptions.

EPA strives to use the best available science to support our benefits analyses. We recognize that interpretation of the science regarding air pollution and health is dynamic and evolving. After reviewing the scientific literature and recent scientific advice, we have determined that the no-threshold model is the most appropriate model for assessing the mortality benefits associated with reducing $PM_{2.5}$ exposure. Consistent with this recent advice, we are replacing the previous threshold sensitivity analysis with a new "Lowest Measured Level" (LML) assessment. While a LML assessment provides some insight into the level of uncertainty in the estimated PM mortality benefits, EPA does not view the LML as a threshold and continues to quantify PM-related mortality impacts using a full range of modeled air quality concentrations.

Most of the estimated PM-related benefits in this non-mercury technology option would accrue to populations exposed to higher levels of $PM_{2.5}$. Using the Pope *et al.* (2002) study, 85 percent of the population is exposed at or above the LML of 7.5 $\mu g/m^3$. Using the Laden *et al.* (2006) study, 40 percent of the population is exposed above the LML of 10 $\mu g/m^3$. It is important to emphasize that we have high confidence in $PM_{2.5}$-related effects down to the lowest LML of the major cohort studies. This fact is important, because as we estimate PM-related mortality among populations exposed to levels of $PM_{2.5}$ that are successively lower, our confidence in the results diminishes. However, our analysis shows that the great majority of the impacts occur at higher exposures. This analysis does not include the type of detailed uncertainty assessment found in the 2006 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) Regulatory Impact Analysis (RIA) because we lack the necessary air quality input and monitoring data to run the benefits model. In addition, we have not conducted any air quality modeling for this rule. The 2006 $PM_{2.5}$ NAAQS benefits analysis [l] provides an indication of the sensitivity of our results to various assumptions.

It should be emphasized that the monetized co-benefits estimates provided above do not include benefits from several important benefit categories, including reducing HAP

[i] Fann, N., C.M. Fulcher, B.J. Hubbell. 2009. "The influence of location, source, and emissions type in estimates of the human health benefits of reducing a ton of air pollution." *Air Qual Atmos Health* (2009) 2:169–176.

[j] Pope *et al,* 2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution." *Journal of the American Medical Association* 287:1132–1141.

[k] Laden *et al,* 2006. "Reduction in Fine Particulate Air Pollution and Mortality." *American Journal of Respiratory and Critical Care Medicine.* 173: 667–672.

[l] U.S. Environmental Protection Agency, 2006. Final Regulatory Impact Analysis: $PM_{2.5}$ NAAQS. Prepared by Office of Air and Radiation. October. Available on the Internet at *http://www.epa.gov/ttn/ecas/ria.html.*

emissions, ecosystem effects, and visibility impairment. The primary benefit of this non-mercury technology option is the reduction of mercury emissions from these sources. Due to data and resource limitations, we were unable to model mercury dispersion, deposition, methylation, bioaccumulation in fish tissue, and human consumption of mercury-contaminated fish that would be needed in order to estimate the human health benefits from reducing mercury emissions. Although we do not have sufficient information or modeling available to provide monetized estimates for this non-mercury technology option, we include a qualitative assessment of these other effects in the RIA for the non-mercury technology option, which is available in the docket.

The annualized social costs of this non-mercury technology option are estimated to be $13 million (2007$, 7 percent discount rate) in 2013. The combined monetized energy co-benefits are $22 million to $43 million (2007$, 3 percent discount rate) and $21 million to $40 million (2007$, 7 percent discount rate) for 2013. Thus, net benefits of the non-mercury technology option are estimated at $9 million to $30 million (2007$, 3 percent discount rate) and $8 million to $27 million (2007$, 7 percent discount rate) in 2013. EPA believes that the non-monetized mercury benefits and the energy co-benefits of the non-mercury technology option are likely to exceed the costs even when taking into account the uncertainties in the cost and benefit estimates.

4. Rationale for Selection of the Non-Mercury Technology Option

While the results of these additional analyses were that the costs and cost-effectiveness values decreased from those estimated in our 2008 analysis, there is still some uncertainty regarding numerous facets of the cost analysis. Since the lower estimates of potential costs show that conversion to non-mercury technology may be a reasonable investment action in the long term, we are proposing this supplemental amendment to request a complete set of comments on the costs presented here in order to prepare a final cost analysis to support or not support the non-mercury technology option. Once all comments are received, we will re-evaluate whether or not these costs constitute an unreasonably high cost impact given the benefits of eliminating all mercury emissions to public health, the environment, and to energy use.

We gave serious consideration to the comments we received that stated the use of mercury in chlor-alkali plants is unnecessary since over 95 percent of the chlorine produced in the U.S. is already produced using mercury-free technology. Forcing these plants to switch to mercury-free technology would eliminate approximately 0.5 tons of mercury released per year.

In the 2008 proposal, we rejected the conversion to non-mercury technology as a beyond-the floor option because of the high cost impacts. The total annual costs estimated at that time were around $38 million, or around $7.5 million per facility on average for each of the five facilities operating at that time. The revised cost analysis described above estimates total annual costs of around $13 million, which averages to just over $3 million per facility. Therefore, the current estimated conversion costs are around 60 percent lower than those driving our decision in 2008.

With regard to cost-effectiveness, we stated in the original proposal of the Mercury Cell NESHAP Standard in 2002 (67 FR 44683) that we considered the additional mercury emission reduction achieved by the beyond-the-floor option for hydrogen by-product vents and end-box ventilation systems to be warranted at an incremental cost-effectiveness of $9,000 per pound of mercury emission reduction. We did not indicate that this cost-effectiveness level represented an upper end of acceptability, and in other contexts, such as the Clean Air Mercury Rule (70 FR 28606, 05/18/2005),[m] we have found even larger cost-effectiveness factors to be reasonable. Similarly, in our 2008 proposal of amendments, we did not conclude that a cost-effectiveness value of $14,000 per pound of mercury emission reduction was unacceptable, as this was one of several cost and economic factors considered that led to our conclusion regarding the high cost impact of the beyond-the-floor option of forced conversion.

Historically, EPA has not established a clear cost-effectiveness level for mercury reductions that are considered acceptable. In fact, we have rejected regulatory alternatives for mercury with cost-effectiveness values of $5,000 per pound, and accepted regulatory strategies with estimated cost-effectiveness values of $39,000 per pound, in the case of the Clean Air Mercury Rule.[n] Obviously, when making decisions regarding regulatory approaches to achieve mercury reductions, we have looked at cost in conjunction with many other factors to assess the reasonableness of possible control strategies.

We also recognize that the mercury cell technology is an outdated technology that has been largely phased out in the U.S. even without a mercury emissions prohibition and even with the high costs of the conversion process. While the economic analysis suggests significant adverse economic impacts could occur if all four plants closed rather than convert to non-mercury technology, we believe that it is possible that one potential outcome of this proposed rule is that some companies will convert rather than close, if the recent incidence of conversion to non-mercury technology by the U.S. chlor-alkali industry continues. Therefore, the negative economic effects described above would be mitigated if only some of the four facilities closed.

We also believe that any near-term negative economic impacts are justified given the potential adverse health and environmental effects of mercury that will be reduced permanently into the future. Therefore, we are proposing this non-mercury technology option to request comments on whether the benefits of eliminating mercury emissions from this industry, as a beyond-the-floor control alternative, are warranted given the foregoing discussion.

B. What is the enhanced work practices option (Option 2)?

1. Summary of Enhanced Work Practices Option

On June 11, 2008 (73 FR 33257), we proposed modifications to the work practice standards that apply to fugitive emissions, primarily those fugitive emissions from cell rooms. The proposed modifications to these work practices included requiring mercury

[m] On March 29, 2005, EPA published a final rule (70 FR 15994) entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List (Section 112(n) Revision Rule)." Following that final action, the Administrator received two petitions for reconsideration. In response to those petitions, EPA announced (**Federal Register**, Vol. 70, October 28, 2005, p. 62200) the reconsideration of certain aspects of the Section 112(n) Revision Rule, but these aspects did not include costs related to mercury control or cost-effectiveness.

[n] The costs of complying with CAMR as a whole are discussed briefly in the preamble to the final rule [**Federal Register**, Vol. 70, No. 95, May 18, 2005, pp. 28606–28700. Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units (40 CFR Parts 60, 72, and 75)], and in more detail in two items in the two air dockets for the CAMR rule: EPA Office of Research and Development's White Papers "Control of Mercury Emissions from Coal Fired Electric Utility Boilers." Docket ID No. OAR–2002–0056 and Docket ID No. A–92–55.

monitoring in the cell room for all facilities, along with daily work practices and weekly certification of the performance of these work practices. Establishment of the "action level" for investigating and correcting high mercury concentration levels revealed by the continuous monitors would be done for a minimum of 14 days and up to 30 days, at least every 6 months, and the action level would be set at the 90th percentile of the data acquired during the re-setting time period(s). We also proposed to require mercury thermal recovery units that continue to operate at closed or converted plants to remain subject to the applicable requirements as long as they are in operation. These amendments are discussed in more detail in the 2008 proposal (73 FR 33271–33272 and 33275).

In this action, we are re-proposing these amendments as Option 2. We received comments on these proposed amendments in 2008. In developing our final action for the Mercury Cell NESHAP, we will consider these previously submitted comments, along with any additional comments received on this option as a result of this proposed action.

2. Estimated Impacts of the Enhanced Work Practices Option

a. Environmental and Energy Impacts

The mercury emissions reported to the TRI for 2008 for the four operating plants represent an 88 percent decrease from the pre-MACT levels. While some of this reduction is a result of the ability to estimate emission levels using the measured concentrations from the cell room continuous mercury monitoring systems and calculated flow rates, they are also a result of impacts of the Mercury Cell NESHAP. We do not believe that there will initially be substantial emission reductions associated with the enhanced work practice option. However, we believe that as these plants increase their knowledge of the causes of fugitive mercury emissions in the cell room through operation of the cell room monitoring program, mercury emissions will continue to steadily decrease. This is illustrated by the fact that the three plants utilizing these systems reported a decrease in mercury emissions of over 20 percent between 2007 and 2008. While this rate of decrease is not likely to occur every year, we believe the fugitive mercury emissions will continue to be reduced.

Since the enhanced monitoring option will not change the basic operation of the mercury cells, we do not anticipate that there will be any energy impacts.

b. Cost and Economic Impacts

The enhanced monitoring option would make the cell room monitoring program mandatory for all mercury cell chlor-alkali plants and would potentially impact all currently operating plants. However, the level of these impacts will vary depending on whether a plant previously elected to purchase and install a continuous mercury monitoring system in its cell room to comply with the cell room monitoring program alternative of the 2003 Mercury Cell NESHAP. For the three plants that are currently complying via the cell room monitoring program alternative option, we do not predict that there would be any cost impacts. For the single plant that has elected not to purchase, install, and operate a cell room monitoring system to comply via the cell room monitoring program alternative, we estimate that it would incur a capital cost for a monitoring system of around $120,000, and that the total annual cost (including annualized capital cost and operation and maintenance costs) would be slightly more than $25,000 per year. We believe that this value is a low percentage of the annual revenues for this facility and would not cause any adverse economic impacts. The cost and economic impacts of the enhanced monitoring option were discussed in more detail in the 2008 proposal (73 FR 33276).

3. Rationale for Selection of the Enhanced Work Practices Option

The evidence is clear that the continuous mercury monitoring programs are effective in identifying and correcting emission events. It is also evident that they are beneficial in identifying emission sources that may have previously been undetected. However, we believe that the routine work practices also play an important role in reducing emissions, by avoiding situations where elevated mercury concentrations are detected by the monitoring program. We believe that the cost and economic impacts of requiring both the work practices and the monitoring program are justified, given the effectiveness this combination has in reducing mercury emissions. Further, we believe that selection of this option would lessen the potential near-term negative economic impacts associated with the non-mercury technology option, since plants would likely continue to operate.

C. What amendments are being proposed that are independent of which option is selected?

In addition to the co-proposal of the two options discussed above in Sections III.A and III.B, we are also proposing amendments that would apply regardless of whether we select the non-mercury technology option or the enhanced monitoring option. Specifically, we are proposing to amend the provisions of the existing NESHAP that apply to periods of SSM and to correct compliance errors in the rule.

1. Provisions That Apply During Periods of Startup, Shutdown, and Malfunction

This proposed action would amend the provisions of the existing NESHAP that apply to periods of SSM. The proposed revisions of these provisions result from a Court decision that vacated portions of two provisions in EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. (*Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), *cert. denied,* 130 S. CT. 1735 (U.S. 2010)). Consequently, this proposed revised rule would require that affected sources comply with the emission limitations and work practices at all times, including during periods of SSM. For reasons discussed below, we are also proposing to promulgate an affirmative defense to civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense. These changes would go into effect upon the effective date of promulgation of the final rule.

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), *cert. denied,* 130 S. Ct. 1735 (2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and (h)(1), that is part of a regulation commonly known as the "General Provisions Rule," that EPA had promulgated under section 112 of the CAA. When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempted sources from the requirement to comply with the otherwise applicable CAA section 112(d) emission standard during periods of SSM. The 2003 Mercury Cell NESHAP Subpart included a reference to 40 CFR 63.6(f)(1), as well as regulatory text unique to the 2003 Mercury Cell NESHAP that exempted compliance with standards during SSM events. It

did not include a reference to 40 CFR 63.6 (h)(1), since the rule does not have opacity and visible emission standards. In light of *Sierra Club* v. *EPA,* we are proposing to eliminate the SSM exemption in the Mercury Cell NESHAP, by revising Table 10, which addresses the applicability of the part 63 General Provisions to mercury cell chlor-alkali plants, to state that 40 CFR 63.6(f)(1) does not apply. As such, all emission standards and work practices would apply at all times. We are also proposing to remove other references in subpart IIIII and Table 10 related to SSM, including provisions that exempted compliance with standards during SSM periods. We are also proposing to remove the General Provisions' requirement that the source develop an SSM plan, and to remove certain recordkeeping and reporting requirements related to the SSM exemption, but we are retaining the recordkeeping and related requirements for malfunctions and request public comment on the requirements. EPA has attempted to ensure that regulatory language relating to the SSM exemption has been removed. We solicit comment on whether we have overlooked any regulatory provisions that might be inappropriate, unnecessary, or redundant based on our proposal to remove the exemption from compliance with emission standards during periods of SSM.

Regarding startup and shutdown modes of operation at mercury cell plants, based on available information EPA does not consider emissions during these periods to be significantly different than emissions during normal operation, and therefore is not proposing separate limits that would apply during these periods. We do not have any information that shows emissions at mercury cell plants would be significantly different during startup or shutdown than during normal operation; nor do we have information suggesting that the emissions control measures required by the 2003 rule would be less effective during startup or shutdown periods. We request public comment on whether emissions during startup and shutdown are instead significantly different compared to other normal operation, such that a different standard for startup and shutdown periods would be warranted.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. In contrast, malfunction is defined as a "sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or useful manner * * *" (40 CFR 63.2). EPA believes that a malfunction should not be viewed as a distinct operating mode and, therefore, any emissions that occur during malfunctions do not need to be factored into development of CAA section 112(d) standards, which, once promulgated, apply at all times. In *Mossville Environmental Action Now* v. *EPA,* 370 F.3d 1232, 1242 (DC Cir. 2004), the court upheld as reasonable standards that had factored in variability of emissions under all operating conditions. However, nothing in section 112(d) or in case law requires that EPA anticipate and account for the innumerable types of potential malfunction events in setting emission standards. *See, Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by "uncontrollable acts of third parties, such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.") Further, it is reasonable to interpret CAA section 112(d) as not requiring EPA to account for malfunctions in setting emission standards. For example, we note that CAA section 112 uses the concept of "best performing" sources to define MACT, the level of stringency that major source standards must meet. Applying the concept of "best performing" to a source that is malfunctioning presents significant difficulties. The goal of best performing sources is to operate in such a way as to avoid malfunctions of their units. Consequently, MACT should not be based on periods in which there is a failure to operate.

Moreover, even if malfunctions were considered a distinct operating mode, we believe it would be impracticable to take into account malfunctions in setting CAA section 112(d) standards. As noted above, by definition malfunctions are sudden and unexpected events, and it would be difficult to set a standard that takes into account the myriad different types of malfunctions that can occur across all sources in each source category. Moreover, malfunctions can vary in frequency, degree, and duration, further complicating standard setting.

Under this proposal, in the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation." 40 CFR 63.2 (definition of malfunction.)

Finally, EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause or contribute to an exceedance of the relevant emission standard. (*See, e.g., State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (Feb. 15, 1983).) Therefore, consistent with our recently promulgated final amendments to regulations addressing the Portland Cement category (75 FR 54970, Sept. 9, 2010), we are proposing to add regulatory language providing an affirmative defense against civil penalties for exceedances of emission limits that are caused by malfunctions. *See* proposed amendment to 40 CFR 63.8266 (defining "affirmative defense" to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We are also proposing regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source would have to prove by a preponderance of the evidence that it has met all of the elements set forth in sections. (*See* proposed amendment to 40 CFR 63.8226(b); *see also* 40 CFR 22.24.) The proposed criteria would ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and/or careless operation). The proposed criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions, and to prevent future malfunctions. In

any judicial or administrative proceeding, the Administrator would be able to challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties could be assessed in accordance with Section 113 of the Clean Air Act (*see also* 40 CFR 22.77).

2. Compliance Provisions Rule Corrections

We are proposing amendments to correct errors and improve the compliance provisions of the rule. These changes, which are described below, were included in the June 2008 proposal (73 FR 33275).

a. Detection Limit For Mercury Monitor Analyzers

Paragraph (a)(2) of § 63.8242, "What are the installation, operation, and maintenance requirements for my continuous monitoring systems?" requires that mercury continuous monitor analyzers have a detector with the capability to detect a mercury concentration at or below 0.5 times the mercury concentration level measured during the performance test. Since promulgation of the 2003 Mercury Cell NESHAP, we determined that setting the analyzer detection capability in reference to the concentration level during the performance test could be problematic. We realized that a concentration of 0.5 times the mercury concentration could, in cases of low mercury concentrations, be infeasible for the monitoring devices on the market. Information available to us at this time shows that 0.1 micrograms per cubic meter ($\mu g/m^3$) is the detection limit of commonly commercially available analyzers. We believe that analyzers with detection limits at this level are more than sufficient to determine compliance with the limitations in the 2003 Mercury Cell NESHAP. Therefore, we are proposing to revise this paragraph to require a detector with the capability to detect a mercury concentration at or below 0.5 times the mercury concentration measured during the test or 0.1 $\mu g/m^3$.

b. Averaging Period for Mercury Recovery Unit Compliance

The 2003 Mercury Cell NESHAP is inconsistent as to whether the rule requires a daily average or an hourly average to determine continuous compliance with the emissions standard for mercury recovery units found at § 63.8190(a)(3) of § 63.8190 "What emission limitations must I meet?" Paragraph (b) of § 63.8243 "What equations and procedures must I use to demonstrate continuous compliance?" clearly indicates that this averaging period is daily: "You must calculate the daily average mercury concentration using Equation 2 * * *" However, paragraph (b) of § 63.8246 "How do I demonstrate continuous compliance with the emission limitations and work practice standards?" states that for each mercury thermal recovery unit vent, "you must demonstrate continuous compliance with the applicable emission limit specified in § 63.8190(a)(3) by maintaining the outlet mercury hourly-average concentration no higher than the applicable limit."

It was our intention for compliance to be based on a daily average, as detailed below, and the inclusion of "hourly" in paragraph (b) of § 63.8246 "How do I demonstrate continuous compliance with the emission limitations and work practice standards?" was a drafting error. Therefore, we are proposing to correct this error by replacing "hourly" in § 63.8246(b) with "daily." In the proposal **Federal Register** notice for the 2003 Mercury Cell NESHAP (67 FR 44678, July 3, 2002), we clearly stated our intention when we summarized the requirements as follows:

> "To continuously comply with the emission limit for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit, we are proposing that each owner and operator would continuously monitor outlet elemental mercury concentration and compare the daily average results with a mercury concentration operating limit for the vent. * * *"
>
> "Continuous compliance would be demonstrated by collecting outlet elemental mercury concentration data using continuous mercury vapor monitor, calculating daily averages, and documenting that the calculated daily average values are no higher than established operating limits. Each daily average vent elemental mercury concentration greater than the established operating limit would be considered a deviation.

IV. Request for Comment

We request comment on all aspects of the proposed action. All significant comments received during the comment period will be considered.

Five comments were received on the amendments proposed in June 2008. These commenters represent one environmental organization, one industry trade organization, and two companies that own and operate mercury cell chlor-alkali plants. The fifth comment was anonymously submitted in support of environmental organizations. We reviewed and considered these comments. As discussed above in section II.C.3 of this preamble, the consideration of one of the issues raised in the comments has caused us to publish this supplemental proposal today proposing the non-mercury technology option. In developing our final action, we will consider all previously-submitted relevant comments in addition to any comments submitted in response to today's proposal.

Comments are requested on several aspects of this proposed action. First, we are soliciting comments on which of the two options (Option 1: Non-Mercury Technology or Option 2: Enhanced Work Practices) is most appropriate. In providing comments on the selection of one of these options, please provide detailed rationale and additional technical information that supports your recommendation.

Second, we are requesting comments on the specific amendments being proposed under both options. After making a decision on which option we will select for promulgation, we will consider and address all significant comments received on the amendments related to that option. We received comments on the enhanced work practices option following the proposal in June 2008. If that option is selected, we will consider and address those comments along with any new comments received.

Third, we are specifically requesting comments on the potential for the elimination of mercury emissions without converting to membrane cells or plant closure. We are also requesting comment on any measures beyond those included in the enhanced monitoring option that might be employed at mercury cell facilities which could achieve even greater reductions such that mercury emissions are at "near zero" levels without conversion to a non-mercury process or closure.

As noted earlier, we believe that it is improbable that a mercury cell chlor-alkali plant can be operated without mercury emissions. Therefore, we have assumed that requiring the elimination of mercury emissions would effectively require existing mercury cell chlor-alkali plants either to convert to a non-mercury technology or to cease production of chlorine with their current mercury cell production methods. However, if there are circumstances where the elimination of mercury emissions from an operating mercury cell plant could be achieved, we are specifically interested in data and supporting information regarding technologies that would eliminate mercury emissions from an operating mercury cell facility.

We are also interested in the possibility of other emission reduction technologies, process modifications, or practices not included in the enhanced work practices option that could reduce mercury emissions to "near-zero" levels. We are aware of the significant efforts that have been made by the four currently operating mercury cell facilities to reduce mercury emissions. As some of these efforts have been developed more fully in recent years, we have seen significant and consistent reductions in emissions to the current levels. We believe that the further refinement of these methods would continue to steadily decrease mercury emissions. We are requesting comment on a realistic lower bound level that could be achieved.

In addition, a near-zero emission standard alternative would need to include appropriate testing and monitoring provisions. Therefore, in addition to information regarding a realistic lower-bound emissions level, we are also requesting comment on methods to overcome the difficulty of accurately measuring cell room fugitive emissions.

Fourth, we are requesting comments on the proposed amendments related to provisions that apply during periods of SSM and the compliance provisions rule corrections. These amendments would apply regardless of which option we select. The compliance provisions rule corrections were also proposed in June 2008, and any comments received on the prior proposal related to these amendments will also be considered and addressed.

Finally, comments were provided in 2008 on all the reconsideration decisions discussed in our June 2008 proposal (and summarized in section II.C of this preamble). We will accept additional comments on these decisions and consider them, along with the previous comments, in making our final decisions.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an "economically significant regulatory action" because Option 1 is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared a RIA of the potential costs and benefits associated with this action.

When estimating the $PM_{2.5}$-related human health benefits and compliance costs in Table 2 of this preamble, EPA applied methods and assumptions consistent with the state-of-the-science for human health impact assessment, economics and air quality analysis. EPA applied its best professional judgment in performing this analysis and believes that these estimates provide a reasonable indication of the expected benefits and costs to the nation of this rulemaking. The RIA available in the docket describes in detail the empirical basis for EPA's assumptions and characterizes the various sources of uncertainties affecting the estimates below.

When characterizing uncertainty in the PM-mortality relationship, EPA has historically presented a sensitivity analysis applying alternate assumed thresholds in the PM concentration-response relationship. In its synthesis of the current state of the PM science, EPA's 2009 Integrated Science Assessment for Particulate Matter concluded that a no-threshold log-linear model most adequately portrays the PM-mortality concentration-response relationship. In the RIA accompanying this rulemaking, rather than segmenting out impacts predicted to be associated levels above and below a "bright line" threshold, EPA includes a LML that illustrates the increasing uncertainty that characterizes exposure attributed to levels of $PM_{2.5}$ below the LML for each study. Figures provided in the RIA show the distribution of baseline exposure to $PM_{2.5,}$ as well as the lowest air quality levels measured in each of the epidemiology cohort studies. This information provides a context for considering the likely portion of PM-related mortality benefits occurring above or below the LML of each study; in general, our confidence in the size of the estimated reduction $PM_{2.5}$-related premature mortality diminishes as baseline concentrations of $PM_{2.5}$ are lowered. Using the Pope *et al.* (2002) study, the 85 percent of the population is exposed at or above the LML of 7.5 $\mu g/m^3$. Using the Laden *et al.* (2006) study, 40 percent of the population is exposed above the LML of 10 $\mu g/m^3$. While the LML analysis provides some insight into the level of uncertainty in the estimated PM mortality benefits, EPA does not view the LML as a threshold and continues to quantify PM-related mortality impacts using a full range of modeled air quality concentrations.

The cost analysis is also subject to uncertainties. Estimating the cost conversion from one process to another is more difficult than estimating the cost of adding control equipment because it is more dependent on plant specific information. The estimation of cost savings from environmental compliance cost savings elimination of the mercury process is also uncertain. The numbers were based on the savings reported by one U.S. facility and some studies from outside the U.S. The savings might be greater or smaller than estimated. Likewise, since the electricity savings are dependent on many of the same factors, they are also uncertain and may be greater or smaller than estimated.

A summary of the monetized benefits, social costs, and net benefits for the two options at discount rates of 3 percent and 7 percent is in Table 2 of this preamble.

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Table 2. Summary of the Monetized Benefits, Social Costs, and Net Benefits for the Proposed Mercury Chlor Alkali NESHAP in 2013 (thousands of 2007$)[1]

	3% Discount Rate	7% Discount Rate
Option 1: Non-mercury Technology Option		
Total Monetized Benefits[2]	$22,000 To $43,000	$21,000 to $40,000
Total Social Costs[3]	$13,000	$13,000
Net Benefits	$9,000 To $30,000	$8,000 to $27,000
Non-monetized Benefits	656 pounds of mercury (including energy co-benefits)	
	Health effects from NO_2 and SO_2 exposure	
	Ecosystem effects	
	Visibility impairment	
Option 2: Enhanced Work Practice Standards		
Total Monetized Benefits[2]	$0	$0
Total Social Costs[3]	$25	$25
Net Benefits	$-25	$-25

[1] All estimates are for the implementation year (2013), and are rounded to two significant figures.

[2] The total monetized benefits reflect the human health benefits associated with reducing exposure to $PM_{2.5}$. It is important to note that the monetized benefits include many but not all health effects associated with $PM_{2.5}$ exposure. Benefits are shown as a range from Pope et al. (2002) to Laden et al. (2006). These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type. The monetized benefits include CO_2-related benefits calculated using the social cost of carbon, which is discussed further in the RIA. The net present value of reduced CO_2 emissions is calculated differently than other benefits. The same discount rate used to discount the value of damages from future emissions (SCC at 5, 3, 2.5 percent) is used to calculate net present value of SCC for internal consistency. This table shows monetized CO_2 co-benefits at discount rates of 3 and 7 percent that were calculated using the global average SCC estimate at a 3% discount rate because the interagency workgroup on this topic deemed this marginal value to be the central value. In the RIA, we also provide the monetized CO_2 co-benefits using discount rates of 5 percent (average), 2.5 percent (average), and 3 percent (95th percentile).

[3] The annual compliance costs serve as a proxy for the annual social costs of this rulemaking.

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For more information on the benefits analysis, please refer to the RIA for this rulemaking, which is available in the docket.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule, have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. The information collection request (ICR) document prepared by EPA has been assigned an EPA ICR number 2046.06.

OMB has previously approved the information collection requirements in the existing regulation (40 CFR part 63, subpart IIIII) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. and has assigned OMB control number 2060–0542. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The proposed amendments under Option 1 would result in changes to the information collection requirements in the regulation. This information is being collected to assure that mercury emissions have been eliminated. The required notifications, reports, and records are essential in determining compliance, and are required of all affected facilities. The recordkeeping and reporting requirements in this proposed rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

The only information collection associated with the proposed amendments under Option 1 is a one-time certification that must be submitted 60 days after the compliance date. It is estimated that the burden for this information collection is 3 labor hours per response per facility, for a total of 12 labor hours for all four facilities. This burden will occur during the first year after promulgation, but the annual burden for this information collection averaged over the 3 years following the compliance date of these amendments is estimated to be a total of 4 labor hours per year. Burden is defined at 5 CFR 1320.3(b).

These proposed amendments under Option 2 would result in changes to the information collection requirements in the regulation. This information is being collected to assure compliance with the regulation. The required notifications, reports, and records are essential in determining compliance, and are required of all affected facilities. The recordkeeping and reporting requirements in proposed option 2 are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the three years following promulgation of these amendments is estimated to be a total of 3,800 labor hours per year. The average annual reporting burden is 16 hours per response, with approximately 3 responses per facility for 5 respondents. The only capital/startup costs are associated with the installation of a cell room monitoring system at one facility, since we know that these systems are already in place at the other four facilities. The total capital/startup cost annualized over its expected useful life is $13,000. The total operation and maintenance is $60,000 per year. There are no estimated costs associated with purchase of services. Burden is defined at 5 CFR 1320.3(b).

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 action, which includes this ICR, under Docket ID number EPA–HQ–OAR–2002–0017. Submit any comments related to the ICR for this proposed rule 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 March 14, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by April 13, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in these proposed amendments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses, as defined by the Small Business Administration's 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 is estimated to impact a total of four sources, with one of the four facilities estimated to be a small entity. We have estimated that small entity compliance costs, as assessed by the facilities' CSR, are expected to be just over 1 percent of revenues. New sources are already prohibited from using the mercury technology in the chlor-alkali production process by virtue of the 2003 Mercury Cell NESHAP's provisions; consequently, we did not estimate any impacts for new sources since this rulemaking would not impose any new requirements on them.

This proposed rule will not have a significant economic impact on a substantial number of small entities, since there is only one small entity in the group of four facilities and compliance costs for this small entity are expected to be just over 1 percent of revenues. However, we continue to be interested in the potential impacts of this proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. (**Note:** The term "enforceable duty" does not include duties and conditions in voluntary Federal contracts for goods and services.) Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA. This action also is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

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. This proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this action.

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). This proposed rule imposes no requirements on Tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance. However, given the potential health effects of mercury on children, the elimination in mercury emissions from these four facilities could result in additional protection of children from environmental health risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (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. We have concluded that this action is not likely to have any adverse energy effects because no additional requirements are contained in this proposed rule that consume energy. In fact, as discussed previously in this preamble, this action would result in decreased energy usage.

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 (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. 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 does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 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 U.S.

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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The nationwide standards would totally eliminate mercury emissions from sources affected by this proposed rule and thus eliminate all adverse human health or environmental effects on all populations, including minority or low-income populations.

An analysis of demographic data showed that the average percentages of the population below the poverty level and the percentages of the population 17 years old and younger in populations in close proximity to the sources are similar to the national averages. The percentage of minorities in populations in close proximity to the sources is lower than the national average.

In determining the aggregate demographic makeup of the communities near affected sources, EPA used census data at the block group level to identify demographics of the populations considered to be living near affected sources, such that they have notable exposures to current emissions from these sources. In this approach, EPA reviewed the distributions of different socio-demographic groups in the locations of the expected emission reductions from this proposed rule. The review identified those census block groups with centroids within a circular distance of a 0.5, 3, and 5 miles of affected sources and determined the demographic and socio-economic composition (*e.g.,* race, income,

education, *etc*) of these census block groups. The radius of 3 miles (or approximately 5 kilometers) has been used in other demographic analyses focused on areas around potential sources.[o p q r] There were no census block groups with centroids within 0.5 miles of any of the sources affected by this proposed rule. EPA's demographic analysis has shown that these areas in aggregate have lower proportions of American Indians, African-Americans, Hispanics, and "Other and Multi-racial" populations than the national average. The analysis showed that these areas in aggregated had similar proportions of families with incomes below the poverty level as the national average.[s]

EPA defines "Environmental Justice" to include meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. To promote meaningful involvement, EPA has developed a communication and outreach strategy to ensure that interested communities have access to this proposed rule, are aware of its content, and have an opportunity to comment during the comment period. During the comment period, EPA will publicize the rulemaking via EJ newsletters, Tribal newsletters, EJ list servers, and the Internet, including EPA's Office of Policy Rulemaking Gateway Web site (*http://yosemite.epa.gov/opei/RuleGate.nsf/*). EPA will also provide general rulemaking fact sheets (*e.g.,* why is this important for my community) for EJ community groups and conduct conference calls with interested communities. In addition, State and Federal permitting requirements will provide State and local governments and members of affected communities the opportunity to provide comments on the permit conditions associated with permitting the sources affected by this rulemaking.

[o] U.S. GAO (Government Accountability Office). *Demographics of People Living Near Waste Facilities.* Washington, DC: Government Printing Office; 1995.

[p] Mohai P, Saha R. "Reassessing Racial and Socioeconomic Disparities in Environmental Justice Research". *Demography.* 2006;43(2): 383–399.

[q] Mennis J. "Using Geographic Information Systems to Create and Analyze Statistical Surfaces of Populations and Risk for Environmental Justice Analysis". *Social Science Quarterly,* 2002;83(1):281–297.

[r] Bullard RD, Mohai P, Wright B, Saha R, *et al. Toxic Waste and Race at Twenty 1987–2007.* United Church of Christ. March, 2007.

[s] The results of the demographic analysis are presented in "Review of Environmental Justice Impacts," August 2010, a copy of which is available in the docket.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: March 3, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[Amended]

1. The authority citation for part 63 continues to read as follows:

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

[OPTION 1 FOR SUBPART IIIII—AMENDED]

Subpart IIIII—[Amended]

2. Section 63.8184 is amended by revising paragraphs (a) and (c) to read as follows:

§ 63.8184 What parts of my plant does this subpart cover?

(a) This subpart applies to two types of affected sources at a mercury cell chlor-alkali plant: the mercury cell chlor-alkali production facility, as defined in paragraph (a)(1) of this section and § 63.8266; and the mercury recovery facility, as defined in paragraph (a)(2) of this section and § 63.8266.

(1) The mercury cell chlor-alkali production facility affected source consists of all cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a mercury cell chlor-alkali plant. This subpart covers mercury emissions from by-product hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes.

(2) The mercury recovery facility affected source consists of all processes and associated operations needed for mercury recovery of wastes generated from a mercury cell chlor-alkali plant. This subpart covers mercury emissions from mercury thermal recovery unit vents and fugitive emission sources associated with storage areas for mercury-containing wastes.

* * * * *

(c) A mercury recovery facility is a new affected source if you commence construction or reconstruction of the affected source after the dates specified in § 63.8186(c) and (d). An affected source is reconstructed if it meets the definition of a reconstruction in § 63.2.

3. Section 63.8186 is revised to read as follows:

§ 63.8186 When do I have to comply with this subpart?

(a) Compliance date for the emission limitations in § 63.8190(a)(2), the work practices in § 63.8192, and all the associated requirements for existing mercury cell chlor-alkali production facility and mercury recovery facility affected sources. If you have an existing mercury cell chlor-alkali production facility or mercury recovery facility affected source, you must comply with the applicable emission limitations in § 63.8190(a)(2), work practices in § 63.8192, and all the associated requirements no later than December 19, 2006.

(b) Compliance date for emission limitation in § 63.8190(b) and all the associated requirements for existing mercury cell chlor-alkali production facility and mercury recovery facility affected sources. If you have an existing mercury cell chlor-alkali production facility or mercury recovery facility affected source, you must comply with § 63.8190(b) by three years after the date that the final rule is published in the **Federal Register**. Prior to compliance with § 63.8190(b), you must comply with the applicable emission limitations in § 63.8190(a)(2), work practices in § 63.8192, and all the associated requirements. After you have demonstrated compliance with § 63.8190(b) and have submitted the certification of compliance in accordance with § 63.8252(f), you are only subject to § 63.8246(d) of this subpart.

(c) Compliance date for the emission limitations in § 63.8190(a)(3), the work practices in § 63.8192, and all the associated requirements for new or reconstructed mercury recovery facility affected sources. If you commenced construction or reconstruction of your mercury recovery facility after July 3, 2002, and before March 14, 2011, you must comply with the applicable emission limitation in § 63.8190(a)(3), work practices in § 63.8192, and all the associated requirements by either December 19, 2003, or upon initial startup, whichever is later.

(d) Compliance date for the emission limitation under § 63.8190(b) and all the associated requirements for new or reconstructed mercury recovery facility affected sources.

(1) If you commenced construction or reconstruction of your mercury recovery facility after July 3, 2002, and before

March 14, 2011, you must comply with the emission limitation in § 63.8190(b) and all the associated requirements by three years after the date that the final rule is published in the **Federal Register**. Prior to compliance with § 63.8190(b), you must comply with the applicable emission limitation in § 63.8190(a)(3), work practices in § 63.8192, and all the associated requirements. After you have demonstrated compliance with § 63.8190(b) and have submitted the certification of compliance in accordance with § 63.8252(f), you are only subject to § 63.8246(d) of this subpart.

(2) If you commenced construction or reconstruction of your mercury recovery facility after March 14, 2011, you must comply with the emission limitation in § 63.8190(b) and all the associated requirements by the date that the final rule is published in the **Federal Register**, or upon initial startup, whichever is later.

4. Section 63.8190 is amended as follows:

a. Revising paragraph (a)(2) introductory text;

b. Revising paragraph (a)(3) introductory text; and

c. Adding paragraph (b).

The revisions read as follows:

§ 63.8190 What emission limitations must I meet?

(a) * * *

(2) Emission limits which apply to existing mercury cell chlor-alkali production facilities prior to achieving compliance with § 63.8190(b). During any consecutive 52-week period, you must not discharge to the atmosphere total mercury emissions in excess of the applicable limit in paragraph (a)(2)(i) or (ii) of this section calculated using the procedures in § 63.8243(a).

* * * * *

(3) Emission limits which apply to existing mercury recovery facilities and to new or reconstructed mercury recovery facilities that commenced construction or reconstruction after July 3, 2002, and before March 14, 2011 prior to achieving compliance with paragraph (b) of this section. You must not discharge to the atmosphere mercury emissions in excess of the applicable limit in paragraph (a)(3)(i) or (ii) of this section.

* * * * *

(b) Emission limit which applies to each mercury cell chlor-alkali production facility and each mercury recovery facility after the applicable compliance date specified in paragraph § 63.8186(b) or (d). Emissions of mercury are prohibited from each existing mercury cell chlor-alkali production facility and from each existing, new, or reconstructed mercury recovery facility. You must demonstrate compliance with this prohibition in accordance with the provisions in § 63.8236(e) and § 63.8246(d) and submit the certification of compliance required by § 63.8252(f).

5. Section 63.8192 is amended as follows:

a. Revising the introductory text;

b. Revising paragraph (g)(2)(i); and

c. Revising paragraph (g)(3).

The revisions read as follows:

§ 63.8192 What work practice standards must I meet?

Prior to achieving compliance with § 63.8190(b), you must meet the work practice requirements specified in paragraphs (a) through (f) of this section. As an alternative to the requirements specified in paragraphs (a) through (d) of this section, you may choose to comply with paragraph (g) of this section.

* * * * *

(g) * * *

(2) * * *

(i) Beginning on the compliance date specified for your affected source in § 63.8186(a), measure and record the mercury concentration for at least 30 days using a system that meets the requirements of paragraph (g)(1) of this section.

* * * * *

(3) Beginning on the compliance date specified for your affected source in § 63.8186(a), you must continuously monitor the mercury concentration in the cell room. Failure to monitor and record the data according to § 63.8256(c)(4)(ii) for 75 percent of the time in any 6-month period constitutes a deviation.

* * * * *

6. Section 63.8230 is revised to read as follows:

§ 63.8230 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct a performance test no later than the compliance date that is specified in § 63.8186(a) for your affected source to demonstrate initial compliance with the applicable emission limit in § 63.8190(a)(2) for by-product hydrogen streams and end box ventilation system vents and the applicable emission limit in § 63.8190(a)(3) for mercury thermal recovery unit vents.

(b) For the applicable work practice standards in § 63.8192 you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.8186(a).

7. Section 63.8236 is amended by adding paragraph (e) to read as follows:

§ 63.8236 How do I demonstrate initial compliance with the emission limitations and work practice standards?

* * * * *

(e) For each affected source, you have demonstrated initial compliance with the emission limit in § 63.8190(b) if you have eliminated mercury emissions and you have submitted the compliance certification required by § 63.8252(f).

8. Section 63.8243 is amended by revising paragraphs (a) introductory text and (a)(3) introductory text to read as follows:

§ 63.8243 What equations and procedures must I use to demonstrate continuous compliance?

(a) *By-product hydrogen streams and end box ventilation system vents.* For each consecutive 52-week period, you must determine the g Hg/Mg Cl_2 produced from all by-product hydrogen streams and all end box ventilation system vents, if applicable, at a mercury cell chlor-alkali production facility using the procedures in paragraphs (a)(1) through (3) of this section. You must begin collecting data on the compliance date that is specified in § 63.8186(a) for your affected source and calculate your first 52-week average mercury emission rate at the end of the 52nd week after the compliance date.

* * * * *

(3) Beginning 52 weeks after the compliance date specified in § 63.8186(a) for your affected source, you must calculate the 52-week average mercury emission rate from all by-product hydrogen steam and all end box ventilation system vents, if applicable, using Equation 1 of this section as follows:

* * * * *

9. Section 63.8246 is amended by adding paragraph (d) to read as follows:

§ 63.8246 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(d) You must demonstrate continuous compliance with the emission limitations in § 63.8190(b) by operating without mercury emissions.

10. Section 63.8252 is amended by adding paragraph (f) to read as follows:

§ 63.8252 What notifications must I submit and when?

* * * * *

(f) You must submit a compliance certification no later than 60 days after the applicable compliance date

specified in § 63.8186(b) or (d). This certification must state that you have eliminated all mercury emissions and will not use any process in the future that will emit mercury. The certification should also include a statement as to whether you eliminated mercury emissions through conversion to a non-mercury process for chlorine production or whether chlorine is no longer produced at the site.

11. Section 63.8254 is amended as follows:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(2);

The revisions read as follows:

§ 63.8254 What reports must I submit and when?

(a) * * *

(1) The first compliance report must cover the period beginning on December 19, 2006, and ending on June 30, 2007.

(2) The first compliance report must be postmarked or delivered no later than July 31, 2007.

* * * * *

[OPTION 2 FOR SUBPART IIIII—AMENDED]

Subpart IIIII—[AMENDED]

12. Section 63.8182 is amended by revising paragraph (a) to read as follows:

§ 63.8182 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a mercury cell chlor-alkali production facility or a mercury recovery facility at a mercury cell chlor-alkali plant.

* * * * *

13. Section 63.8184 is amended by revising paragraph (a) to read as follows:

§ 63.8184 What parts of my plant does this subpart cover?

(a) This subpart applies to two types of affected sources at a mercury cell chlor-alkali plant: the mercury cell chlor-alkali production facility, as defined in § 63.8266, "What definitions apply to this subpart," and the mercury recovery facility, as also defined in § 63.8266.

* * * * *

14. Section 63.8186 is amended as follows:

a. By revising paragraph (a); and

b. By adding paragraph (e).

§ 63.8186 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with the applicable provisions no later than the dates specified in paragraph (a)(1) and in either paragraph (a)(2) or (3) of this section.

(1) You must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you no later than December 19, 2006, with the exception of the requirements listed in (a)(1)(i) through (4) of this section.

(i) Section 63.8192(h) and (i);

(ii) Section 63.8236(e) and (f);

(iii) Section 63.8252(f); and

(iv) Section 63.8254(e).

(2) If you were complying with the cell room monitoring program provisions in § 63.8192(g) on March 14, 2011 as an alternative to the work practice standards in § 63.8192(a) through (d), you must comply with the provisions in § 63.8192(h) and (i) no later than 6 months after publication of the final rule in the **Federal Register**. At the time that you are in compliance with § 63.8192(h) and (i), you will no longer be subject to the provisions of § 63.8192(g).

(3) If you were complying with the work practice standards in § 63.8192(a) through (d) on March 14, 2011, you must comply with the provisions in § 63.8192(h) and (i) no later than 2 years after publication of the final rule in the **Federal Register**. At the time that you are in compliance with § 63.8192(h) and (i), you will no longer be subject to the provisions of § 63.8192(a) through (d).

* * * * *

(e) If you have a mercury recovery facility at a mercury cell chlor-alkali plant where the mercury cell chlor-alkali production facility ceased production of product chlorine, product caustic, and by-product hydrogen prior to the publication of the final rule in the **Federal Register**, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to your mercury recovery unit by 1 year after the publication of the final rule in the **Federal Register**.

15. Section 63.8192 is amended as follows:

a. By revising § 63.8192 introductory text; and

b. By adding paragraphs (h) and (i).

§ 63.8192 What work practice standards must I meet?

Prior to the applicable compliance date specified in § 63.8186(a)(2) or (3), you must meet the work practice requirements specified in paragraphs (a) through (f) of this section. As an alternative to the requirements specified in paragraphs (a) through (d) of this section, you may choose to comply with paragraph (g) of this section. After the applicable compliance date specified in § 63.8186(a)(2) or (3), you must meet the work practice requirements specified in paragraphs (e), (f), (h), and (i) of this section.

* * * * *

(h) You must meet the work practice standards in Tables 1 through 4 to this subpart and the associated recordkeeping requirements in Table 12 to this subpart. You must adhere to the response intervals specified in Tables 1 through 4 to this subpart at all times. Nonadherence to the intervals in Tables 1 through 4 to this subpart constitutes a deviation and must be documented and reported in the compliance report, as required by § 63.8254(b), with the date and time of the deviation, cause of the deviation, a description of the conditions, and time actual compliance was achieved. As provided in § 63.6(g), you may request to use an alternative to the work practice standards in Tables 1 through 4 to this subpart.

(i) In addition to the work practice standards in paragraph (h) of this section, you must institute a cell room monitoring program to continuously monitor the mercury vapor concentration in the upper portion of each cell room and to take corrective actions as quickly as possible when elevated mercury vapor levels are detected. You must prepare and submit to the Administrator a cell room monitoring plan containing the elements listed in Table 11 to this subpart and meet the requirements in paragraphs (i)(1) through (4) of this section.

(1) You must utilize a mercury monitoring system that meets the requirements of Table 8 to this subpart.

(2) You must establish action levels according to the requirements in paragraphs (i)(2)(i) through (iii) of this section. You must establish an initial action level after the compliance date specified in § 63.8186(a)(2) or (3), and you must re-establish an action level at least once every six months thereafter.

(i) You must measure and record the mercury concentration for at least 14 days and no more than 30 days using a system that meets the requirements of paragraph (i)(1) of this section. For the initial action level, this monitoring must begin on the applicable compliance date specified for your affected source in § 63.8186(a)(2) or (3).

(ii) Using the monitoring data collected according to paragraph (i)(2)(i) of this section, you must establish your action level at the 90th percentile of the data set.

(iii) You must submit your initial action level according to § 63.8252(f) and subsequent action levels according to § 63.8252(g).

(3) Beginning on the compliance date specified for your affected source in § 63.8186(a)(2) or (3), you must continuously monitor the mercury concentration in the cell room. Failure to monitor and record the data according to § 63.8256(e)(4)(iii) for 75 percent of the time in any 6-month period constitutes a deviation.

(4) If the average mercury concentration for any 1-hour period exceeds the currently applicable action level established according to paragraph (i)(2) of this section, you must meet the requirements in either paragraph (i)(4)(i) or (ii) of this section.

(i) If you determine that the cause of the elevated mercury concentration is an open electrolyzer, decomposer, or other maintenance activity, you must record the information specified in paragraphs (i)(4)(i)(A) through (C) of this section.

(A) A description of the maintenance activity resulting in elevated mercury concentration;

(B) The time the maintenance activity was initiated and completed; and

(C) A detailed explanation how all the applicable requirements of Table 1 to this subpart were met during the maintenance activity.

(ii) If you determine that the cause of the elevated mercury concentration is not an open electrolyzer, decomposer, or other maintenance activity, you must follow the procedures specified in paragraphs (i)(4)(ii)(A) and (B) of this section until the mercury concentration falls below the action level. You must also keep all the associated records for these procedures as specified in Table 12 to this subpart. Nonadherence to the intervals in paragraphs (i)(4)(ii)(A) and (B) of this section constitutes a deviation and must be documented and reported in the compliance report, as required by § 63.8254(b).

(A) Within 1 hour of the time the action level was exceeded, you must conduct each inspection specified in Table 2 to this subpart, with the exception of the cell room floor and the pillars and beam inspections. You must correct any problem identified during these inspections in accordance with the requirements in Tables 2 and 3 to this subpart.

(B) If the Table 2 inspections and subsequent corrective actions do not reduce the mercury concentration below the action level, you must inspect all decomposers, hydrogen system piping up to the hydrogen header, and other potential locations of mercury vapor leaks using a technique specified in Table 6 to this subpart. If a mercury vapor leak is identified, you must take the appropriate action specified in Table 3 to this subpart.

16. Section 63.8230 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 63.8230 By what date must I conduct performance tests or other initial compliance demonstrations?

* * * * *

(b) For the applicable work practice standards in § 63.8192(a) through (g), you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.8186(a)(1).

(c) For the applicable work practice standards in § 63.8192(e), (f), (h), and (i), you must demonstrate initial compliance within 60 calendar days after the applicable compliance date that is specified for your affected source in § 63.8186(a)(2) or (3).

17. Section 63.8236 is amended by revising paragraph (c) introductory text and by adding paragraphs (e) and (f) to read as follows:

§ 63.8236 How do I demonstrate initial compliance with the emission limitations and work practice standards?

* * * * *

(c) For each affected source, you have demonstrated initial compliance with the applicable work practice standards in § 63.8192(a) through (g) if you comply with paragraphs (c)(1) through (7) of this section:

* * * * *

(e) After the date of publication of the final rule in the **Federal Register**, for each affected source, you have demonstrated initial compliance with the applicable work practice standards in § 63.8192(e), (f), (h), and (i) if you comply with paragraphs (e)(1) through (4) of this section:

(1) You certify in your Revised Work Practice Notification of Compliance Status that you are operating according to the work practice standards in § 63.8192(h).

(2) You have submitted your cell room monitoring plan as part of your Revised Work Practice Notification of Compliance Status and you certify in your Revised Work Practice Notification of Compliance Status that you are operating according to the continuous cell room monitoring program under § 63.8192(i) and that you have established your initial action level according to § 63.8192(i)(2).

(3) You have re-submitted your washdown plan as part of your Revised Work Practice Notification of Compliance Status and you re-certify in your Revised Work Practice Notification of Compliance Status that you are operating according to your washdown plan.

(4) You have re-submitted records of the mass of virgin mercury added to cells for the 5 years preceding December 19, 2006, as part of your Revised Work Practice Notification of Compliance Status.

(f) You must submit the Revised Work Practice Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8252(f).

18. Section 63.8246 is amended by revising the first sentence of paragraph (b)(1) introductory text to read as follows:

§ 63.8246 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(b) * * *

(1) For each mercury thermal recovery unit vent, you must demonstrate continuous compliance with the applicable emission limit specified in § 63.8190(a)(3) by maintaining the outlet mercury daily-average concentration no higher than the applicable limit. * * *

* * * * *

19. Section 63.8252 is amended by adding paragraphs (f) and (g) to read as follows:

§ 63.8252 What notifications must I submit and when?

* * * * *

(f) You must submit a Revised Work Practice Notification of Compliance Status according to paragraphs (f)(1) and (2) of this section.

(1) You must submit a Revised Work Practice Notification of Compliance Status before the close of business on the date 60 days after the applicable compliance date in § 63.8186(a)(2) or (3). The Revised Work Practice Notification of Compliance Status must contain the items in paragraphs (f)(1)(i) through (iii) of this section:

(i) A certification that you are operating according to the work practice standards in § 63.8192(h).

(ii) Your cell room monitoring plan, including your initial action level determined in accordance with § 63.8192(i)(2), and a certification that you are operating according to the continuous cell room monitoring program under § 63.8192(i).

(iii) Your washdown plan, and a certification that you are operating according to your washdown plan under § 63.8192(e).

(2) Records of the mass of virgin mercury added to cells for the 5 years preceding December 19, 2006.

(g) You must submit subsequent action levels determined in accordance with § 63.8192(i)(2), along with the supporting data used to establish the action level, within 30 calendar days after completion of data collection.

20. Section 63.8254 is amended by revising paragraph (b)(7) introductory text to read as follows:

§ 63.8254 What reports must I submit and when?

* * * * *

(b) * * *

(7) For each deviation from the requirements for work practice standards in Tables 1 through 4 to this subpart that occurs at an affected source (including deviations where the response intervals were not adhered to as described in § 63.8192(b)), each deviation from the cell room monitoring program monitoring and data recording requirements in § 63.8192(i)(3), and each deviation from the response intervals required by § 63.8192(i)(4) when an action level is exceeded, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

* * * * *

21. Section 63.8256 is amended by revising paragraph (c) introductory text and adding paragraph (e) to read as follows:

§ 63.8256 What records must I keep?

* * * * *

(c) Records associated with the work practice standards that must be kept prior to the applicable compliance date in § 63.8186(a)(2) or (3).

* * * * *

(e) Records associated with the work practice standards that must be kept after the applicable compliance date in § 63.8186(a)(2) or (3).

(1) You must keep the records specified in paragraphs (e)(1)(i) and (ii) of this section.

(i) A weekly record certifying that you have complied with the work practice standards in Tables 1 through 4 to this subpart. This record must, at minimum, list each general requirement specified in paragraphs (e)(1)(i)(A) through (D) of this section. Figure 1 to this subpart provides an example of this record.

(A) The design, operation, and maintenance requirements in Table 1 to this subpart,

(B) The required inspections in Table 2 to this subpart,

(C) The required actions for liquid mercury spills and accumulations and hydrogen and mercury vapor leaks in Table 3 to this subpart, and

(D) The requirements for mercury liquid collection in Table 4 to this subpart.

(ii) The records specified in Table 12 to this subpart related to mercury and hydrogen leaks.

(2) You must maintain a copy of your current washdown plan and records of when each washdown occurs.

(3) You must maintain records of the mass of virgin mercury added to cells for each reporting period.

(4) You must keep your current cell room monitoring plan and the records specified in paragraphs (e)(4)(i) through (vi) of this section.

(i) Records of the monitoring conducted in accordance with § 63.8192(i)(2)(i) to establish your action levels, and records demonstrating the development of these action levels.

(ii) During each period that you are gathering cell room monitoring data in accordance with the requirements of § 63.8192(i)(2)(i), records specified in Table 9.

(iii) Records of the cell room mercury concentration monitoring data collected.

(iv) Instances when the action level is exceeded.

(v) Records specified in § 63.8192(i)(4)(i) for maintenance activities that cause the mercury vapor concentration to exceed the action level.

(vi) Records of all inspections and corrective actions taken in response to a non-maintenance related situation in which the mercury vapor concentration exceeds the action level as specified in Table 12 of this subpart.

22. Section 63.8266 is amended by revising the definitions of "Mercury cell chlor-alkali plant" and "Mercury recovery facility" to read as follows:

§ 63.8266 What definitions apply to this subpart?

* * * * *

Mercury cell chlor-alkali plant means all contiguous or adjoining property that is under common control, where a mercury cell chlor-alkali production facility and/or a mercury recovery facility is located. A mercury cell chlor-alkali plant includes a mercury recovery facility at a plant where the mercury cell chlor-alkali production facility ceases production.

* * * * *

Mercury recovery facility means an affected source consisting of all processes and associated operations needed for mercury recovery from wastes generated by a mercury cell chlor-alkali plant.

* * * * *

23. The tables to subpart IIIII are amended as follows:

a. By revising the heading to table 5;

b. By revising the introductory text to table 9;

c. By adding tables 11 and 12; and

d. By adding figure 1:

* * * * *

TABLE 5 TO SUBPART IIIII OF PART 63 —REQUIRED ELEMENTS OF FLOOR–LEVEL MERCURY VAPOR MEASUREMENT AND CELL ROOM MONITORING PLANS PRIOR TO THE APPLICABLE COMPLIANCE DATE SPECIFIED IN § 63.8186(a)(2) OR (3)

* * * * *

TABLE 9 TO SUBPART IIIII OF PART 63—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS

As stated in § 63.8256(c), you must keep the records (related to the work practice standards) specified in the following table prior to the applicable compliance date specified in § 63.8186(a)(2) or (3). After the applicable compliance date specified in § 63.8186(a)(2) or (3), you must keep the records (related to the work practice standards) specified in the following table during the period when you are collecting cell room monitoring data in accordance with § 63.8192(i)(2)(i) to establish your action level:

* * * * *

TABLE 11 TO SUBPART IIIII of Part 63—REQUIRED ELEMENTS CELL ROOM MONITORING PLANS AFTER THE APPLICABLE COMPLIANCE DATE SPECIFIED IN § 63.8186(a)(2) OR (3)

Your Cell Room Monitoring Plan required by § 63.8192(i) must contain the elements listed in the following table:

You must specify in your cell room monitoring plan * * *	Additional requirements
1. Details of your mercury monitoring system.	
2. How representative sampling will be conducted	Include some pre-plan measurements to demonstrate the profile of mercury concentration in the cell room and how the selected sampling locations ensure conducted representativeness.

You must specify in your cell room monitoring plan * * *	Additional requirements
3. Quality assurance/quality control procedures for your mercury monitoring system.	Include a description of how you will keep records or other means to demonstrate that the system is operating properly.
4. Your current action level	Include the background data used to establish your current level. Records of previous action levels must be kept for 5 years in accordance with § 63.8258, but are not required to be included as part of your cell room monitoring plan.

TABLE 12 TO SUBPART IIIII OF PART 63—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS AFTER THE APPLICABLE COMPLIANCE DATE SPECIFIED IN § 63.8186(a)(2) OR (3)

As stated in § 63.8256(e)(1), you must keep the records (related to the work practice standards) specified in the following table;

For each * * *	You must record the following information * * *
1. Liquid mercury spill or accumulation identified during an inspection required by Table 2 to this subpart or at any other time.	a. Location of the liquid mercury spill or accumulation.
	b. Method you use to clean up the liquid mercury spill or accumulation.
	c. Date and time when you clean up the liquid mercury spill or accumulation.
	d. Source of the liquid mercury spill or accumulation.
	e. If the source of the liquid mercury spill or accumulation is not identified, the time when you inspect the area.
2. Liquid mercury leak or hydrogen leak identified during an inspection required by Table 2 to this subpart or at any other time.	a. Location of the leak.
	b. Date and time you identify the leak.
	c. If the leak is a liquid mercury leak, the date and time that you successfully contain the dripping liquid mercury.
	d. Date and time you successfully stop the leak and repair the leaking equipment.

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Figure 1 to Subpart IIIII of Part 63--- Example Record Certifying Compliance with Work Practice Standards

Certification of Compliance with Work Practices Standards
§ 63.8256(e)(1)(i)

I hereby certify, that the [COMPANY NAME] mercury cell chlor-alkali facility in [LOCATION] has complied with each of the following work practice standards for the week of [DATE].

The design, operation, and maintenance requirements in Table 1 to 40 CFR part 63, subpart IIIII.	☐
The required inspections in Table 2 to 40 CFR part 63, subpart IIIII.	☐
The required actions for liquid mercury spills and accumulations and hydrogen and mercury vapor leaks in Table 3 to 40 CFR part 63, subpart IIIII.	☐
The requirements for mercury liquid collection in Table 4 to 40 CFR part 63, subpart IIIII.	☐

COMPANY OFFICIAL _____ DATE _____

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[AMENDMENTS INDEPENDENT OF WHICH OPTION IS SELECTED]

Subpart IIIII—[AMENDED]

24. Section 63.8226 is revised to read as follows:

§ 63.8226 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the applicable emission limitations in § 63.8190 at all times. Prior to achieving compliance with § 63.8190(b), you must be in compliance with the applicable work practice standards in § 63.8192 at all times.

(b) At all times you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

25. Section 63.8232 is amended by removing and reserving paragraph (a) to read as follows:

§ 63.8232 [Amended]

(a) [Reserved]

* * * * *

26. Section 63.8242 is amended by revising paragraph (a)(2) to read as follows:

§ 63.8242 What are the installation, operation, and maintenance requirements for my continuous monitoring systems?

(a) * * *

(2) Each mercury continuous emissions monitor analyzer must have a detector with the capability to detect a

mercury concentration of either 0.5 times the mercury concentration level measured during the performance test conducted according to § 63.8232 or 0.1 μg/m^3.

* * * * *

27. Section 63.8246 is amended by revising paragraph (b)(1) to read as follows:

§ 63.8246 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

* * * * *

(b) * * *

(1) For each mercury thermal recovery unit vent, you must demonstrate continuous compliance with the applicable emission limit specified in § 63.8190(a)(3) by maintaining the outlet mercury daily-average concentration no higher than the applicable limit. To determine the outlet mercury concentration, you must monitor according to paragraphs (b)(1)(i) or (ii) of this section.

* * * * *

28. Section 63.8248 is amended as follows:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(2); and

c. Removing and reserving paragraph (b).

The revisions read as follows:

§ 63.8248 What other requirements must I meet?

(a) * * *

(1) You must report each instance in which you did not meet each emission limitation in § 63.8190 that applies to you.

(2) You must report each instance in which you did not meet each work practice standard in § 63.8192 that applies to you

* * * * *

(b) [Reserved]

29. Section 63.8254 is amended as follows:

c. Removing and reserving paragraph (b)(4);

d. Revising paragraph (b)(7) introductory text;

e. Revising paragraph (b)(8) introductory text;

f. Revising paragraph (b)(8)(iv);

g. Revising paragraph (b)(8)(vi);

h. Revising paragraph (b)(9) introductory text;

i. Revising paragraph (b)(9)(ii);

j. Revising paragraph (b)(9)(vi); and

k. Removing and reserving paragraph (c).

The revisions read as follows:

§ 63.8254 What reports must I submit and when?

* * * * *

(b) * * *

(4) [Reserved]

* * * * *

(7) For each deviation from the requirements for work practice standards in Tables 1 through 4 to this subpart that occurs at an affected source (including deviations where the response intervals were not adhered to as described in § 63.8192(b)), the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section.

* * * * *

(8) For each deviation from an emission limitation occurring at an affected source where you are using a mercury continuous emission monitor, according to the site-specific monitoring plan required in § 63.8242(a)(3), to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xii) of this section.

* * * * *

(iv) The date and time that each deviation started and stopped.

* * * * *

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(9) For each deviation from an operation and maintenance standard occurring at an affected source where you are using the periodic monitoring option specified in § 63.8240(b) and your final control device is not a nonregenerable carbon adsorber, the compliance report must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(9)(i) through (x) of this section.

* * * * *

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

* * * * *

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to process problems, other known causes, and other unknown causes.

* * * * *

(c) [Reserved]

* * * * *

30. Section 63.8256 is amended by removing and reserving paragraph (a)(2) to read as follows:

§ 63.8256 What records must I keep?

(a) * * *

(2) [Reserved]

* * * * *

31. Section 63.8266 is amended by revising the definitions of "Deviation;" and "Mercury cell chlor-alkali plant" to read as follows:

§ 63.8266 What definitions apply to this subpart?

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the title V operating permit for any affected source required to obtain such a permit; or

(3) Fails to take corrective actions within 48 hours that result in parameter monitoring values being within range.

* * * * *

Mercury cell chlor-alkali plant means all contiguous or adjoining property that is under common control, where a mercury cell chlor-alkali production facility and/or a mercury recovery facility is located. A property where only a mercury recovery facility is operating is considered a mercury cell chlor-alkali plant if a mercury cell chlor-alkali production facility had operated on that property at any time in the past.

* * * * *

32. Table 10 to subpart IIIII of part 63 is revised to read as follows:

TABLE 10 TO SUBPART IIIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII

[As stated in § 63.8262, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applies to Subpart IIIII	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	
§ 63.6(a)–(g), (i), (j), except for (e)(1)(i) and (ii), (e)(3), and (f)(1).	Compliance with Standards and Maintenance Requirements	Yes.	
§ 63.6(e)(1)(i) and (ii), (e)(3), and (f)(1).	SSM Requirements	No.	
§ 63.6(h)	Compliance with Opacity and Visible Emission Standards	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.7(a)(1), (b)–(h), except (e)(1).	Performance Testing Requirements	Yes	Subpart IIIII specifies additional requirements related to site-specific test plans and the conduct of performance tests.
§ 63.7(e)(1)	Performance Testing Requirements Related to SSM	No.	
§ 63.7(a)(2)	Applicability and Performance Test Dates	No	Subpart IIIII requires the performance test to be performed on the compliance date.
§ 63.8(a)(1), (a)(3); (b); (c)(1)–(4), (6)–(8); (d); (e); and (f)(1)–(5).	Monitoring Requirements	Yes.	
§ 63.8(a)(2)	Continuous Monitoring System (CMS) Requirements	No	Subpart IIIII requires a site-specific monitoring plan in lieu of a promulgated performance specification for a mercury concentration CMS.
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart IIIII does not require flares.
§ 63.8(c)(5)	COMS Minimum Procedures	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart IIIII does not require CEMS.
§ 63.8(g)	Data Reduction	No	Subpart IIIII specifies mercury concentration CMS data reduction requirements.
§ 63.9(a)–(e), (g)–(j)	Notification Requirements	Yes.	
§ 63.9(f)	Notification of VE/Opacity Test	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.10(a); (b)(1); (b)(2)(vi)–(xii), (xiv); (b)(3); (c); (d)(1)–(2), (4); (e); (f).	Recordkeeping/Reporting	Yes.	
§ 63.10(b)(2)(i)–(v), (d)(5)	Recordkeeping/Reporting Associated with Startup, Shutdown, and Malfunctions.	No.	
§ 63.10(b)(2)(xiii)	CMS Records for RATA Alternative	No	Subpart IIIII does not require CEMS.
§ 63.10(d)(3)	Reporting Opacity or VE Observations	No	Subpart IIIII does not have opacity and visible emission standards.
§ 63.11	Flares	No	Subpart IIIII does not require flares.
§ 63.12	Delegation	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information	Yes.	

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